TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 348

ANDREW JORDAN, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, PETITIONER

vs.

SAM DE GEORGE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 6, 1950
CERTIORARI GRANTED NOVEMBER 27, 1950

In the

United States Court of Appeals

For the Seventh Circuit

No. 10016

IN THE MATTER OF THE APPLICATION OF SAM DE GEORGE FOR A WRIT OF HABEAS CORPUS.

SAM DE GEORGE,

Relator-Appellant,

vs.

ANDREW JORDAN, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION,

Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

INDEX.

1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of October (it being the 3rd day thereof) in the Year of Our Lord One Thousand Nine Hundred and Forty-Nine and of the Independence of the United States of America, the 174th Year

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. LaBuy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Monday, October 3, 1949.

Court met pursuant to adjournment.

Present: Honorable William J. Campbell, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT.

For the Northern District of Illinois,

Eastern Division.

In the Matter of the Application of
Sam De George
For a Writ of Habeas Corpus. } No. 49 C 406.

Be It Remembered, that on to wit the 8th day of March, 1949, the above-entitled action was commenced by the filing of the following Petition in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to wit:

3 UNITED STATES DISTRICT COURT.

* * (Caption—49-C-406) * *

To the District Court of the United States for the Northern District of Illinois:

To the Honorable Judge of Said Court:

The petition of Sam DeGeorge respectfully shows: (1) that petitioner, Sam DeGeorge, is now in custody and restrained of his liberty by Andrew Jordan, District Director of the United States Immigration and Naturalization Service, Department of Justice, Chicago, Illinois;

(2) That the cause or pretense of such imprisonment and restraint, according to the best knowledge and belief of your petitioner, is a certain warrant of deportation (a copy of which is hereto annexed);

(3) That said imprisonment and restraint are illegal and they consist, among other things, of the following, to-wit:

Warrant of deportation alleges that your petitioner has been sentenced, subsequent to May 1st, 1917, to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude, to-wit:

Violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy): Violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy).

That the alleged grounds set forth in said warrant are insufficient in law and in fact to justify the deportation of petitioner.

4 (4) That the petitioner seeks due process of law.

(5) Petitioner was born in Palermo, Italy, in 1904, and entered the United States at New York City legally in 1921; he was married in 1928 in Harvey, Illinois, to an American citizen, and was divorced in 1939. On January 18, 1944, petitioner was married to an American citizen born in Salem, Illinois. Petitioner has one child, seventeen years of age, by his first marriage, and has always contributed to the support of said child.

Petitioner has real estate at Harvey, Illinois, worth about Twenty Thousand Dollars ($20,000.00) and of which he is one-half owner. Petitioner has never been convicted of any crime of violence and made application for citizenship papers in 1928 and 1933. He registered as an alien and was sentenced to the penitentiary in 1941, and since his release from prison, has been employed as a chef, in addition to being one-half owner in the business, and has had a good moral character for the past seven (7) years.

Petitioner has been living in America continuously since 1921; he has purchased war bonds and was active in civic affairs. Petitioner evaded tax on alcohol and has been punished civilly and criminally, but he feels that these illegal acts were not base or vile or depraved, and, therefore, the crime did not involve moral turpitude.

That no previous application has been made for the writ below prayed for.

Wherefore, your petitioner prays that a writ of Habeas Corpus issue directed to the said Andrew Jordan, Commanding him to have the body of Sam DeGeorge together with the cause of such imprisonment and restraint, forthwith before this Court.

Sam DeGeorge.

State of Illinois }
County of Cook } ss.

Sam DeGeorge, the petitioner, above named, being first duly sworn, on oath says that he has heard and read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated to be upon information and belief, and as to those matters he believes it to be true.

Sam DeGeorge.

Subscribed and sworn to before me this 7th day of March, 1949.

Constantine P. Panatsos,
Notary Public.

(Seal)

5 UNITED STATES OF AMERICA

Department of Justice,

Philadelphia, Pa.

Warrant—Deportation of Alien.

No. 4136/193
56090/201

To: District Director of Immigration and Naturalization, Chicago, Illinois.

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, after due hearing before an authorized immigrant inspector, and upon the basis thereof, an order has been duly made that the alien Salvatore DiGiorgio alias Sam DeGeorge who entered the United States at New York, New York, ex SS "Re D'Italia" on ..... the 25th day of Apr. 1921 is subject to deportation under the following provisions of the laws of the United States to wit: The Act of 1917, in that he has been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude,

to wit: Violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy); violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy).

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to deport the said alien to Italy, at the expenses of the appropriation, "Salaries and Expenses, Immigration and Naturalization Service, 1946," including the expenses of an attendant, if necessary. It is further ordered that execution of the warrant be deferred for a period of six months to allow the alien to apply for a pardon.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 11th day of January, 1946.

A. R. Mackey,
Chief Exclusion and Expulsion Section.

6 And afterwards on, to wit, the 16th day of March, 1949 came the Respondent, Andrew Jordan, District Director of Immigration and Naturalization by his attorneys and filed in the Clerk's office of said Court his certain Return To Writ of Habeas Corpus in words and figures following, to wit:

7 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—49-C-406) * *

RETURN TO WRIT OF HABEAS CORPUS.

To the Honorable William J. Campbell, Judge of the District Court of the United States for the Northern District of Illinois:

1. Now comes Andrew Jordan, District Director of Immigration and Naturalization, United States Department of Justice, Chicago, Illinois by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, and makes the following return to writ of habeas corpus issued herein commanding him to produce the body of Sam DeGeorge before this honorable court and make return as to the time, detention, and restraint and of his doing in the premises.

2. Your respondent alleges the facts to be that the relator was arrested January 15, 1942 by Immigrant Inspector Henry S. Vreeland on a warrant of arrest issued October 10, 1941 by W. W. Brown, Chief, Warrant Branch, Immigration and Naturalization Service, Department of Justice, a copy of which warrant is attached hereto, marked Exhibit A and made a part of this return. Pursuant to the aforesaid warrant of arrest a hearing was opened on May 7, 1942 in the penitentiary at Leavenworth to give the relator an opportunity to show cause why he should not be deported on the charge in the warrant of arrest. Before any testimony was taken he was advised by Presiding Inspector C. W. Young that he had the right to be represented at the hearing by counsel. The relator said he desired to be so represented whereupon the hearing was continued until such time as the relator could arrange for counsel. The hearing was resumed September 14,
8 1943 in the New Post Office Building, Chicago, Illinois before Presiding Inspector E. W. Krause, at which time the relator was represented by counsel of his own choice. A transcript of the record of hearing is attached hereto, identified as Exhibit B and made a part of this return.

3. The relator testified that he was born in Italy November 25, 1904 and that he is a citizen of Italy. He identified as relating to him a certified copy of Indictment, Judgment and Commitment in case No. 1476 in the District Court of the United States for the Southern District of Ohio, Western Division at Dayton, Ohio, entitled United States. *vs.* Sam DeGeorge, et al., disclosing that one Sam DeGeorge was convicted on his plea of guilty to the charge of conspiracy to violate Title 18, Section 88, United States Code and sentenced on May 27, 1938 to serve one (1) year and one (1) day in the penitentiary (Exhibit B, page 9 and Exhibit B (3)). He also identified as relating to him a certified copy of Indictment, Judgment and Commitment in criminal case No. 1105 in the District Court of the United States, Northern District of Indiana, Fort Wayne Division, entitled United States *vs.* Matthew Salvatore Anello, Ralph C. Glenn, Sam DeGeorge, Gregory Joseph Griffo, George Juszek, Joe DeGeorge, Joe Messina, Thomas Morgano, disclosing that Sam DeGeorge, alias Sam DiGeorge, alias Sam Fosso, alias Sam Bello was convicted on June 6, 1941 of violation of Title 18, Section 88, United States Code

and was sentenced to serve two (2) years in the penitentiary (Exhibit B, page 9 and Exhibit B (4)).

4. The respondent avers that violation of Section 18, Title 88, United States Code is a crime involving moral turpitude and has been so held by the courts. In the case of *United States ex rel Berlandi* v. *Reimer,* 113 F. 2d 429, decided by the Circuit Court of Appeals for the Ninth Circuit in 1940, the defendant was convicted on May 26, 1938 under Title 18, Section 88, United States Code, on his plea of guilty of conspiracy with others to violate the Internal Revenue laws. He was sentenced to a year
9 and a day in the penitentiary. In holding that the crime involves moral turpitude the court said:

"It may be that, before the repeal of the 18th Amendment when prosecutions under internal revenue statutes were but alternatives for prosecutions under the Volstead Act, convictions under these various statutes would have been treated alike so far as any question of moral turpitude was concerned. This might seen natural because, except under rare circumstances, the manufacture or sale of liquor was unlawful and the manufacturer or seller could acquire no right to do a lawful business by merely complying with internal revenue statutes and paying taxes. Hence there would in no case be any specific intent to defraud the government but only a general purpose to disregard the prohibition laws. Since the repeal, however, the situation would seem to be different for the business can now be lawfully conducted by the payment of internal revenue taxes and the specific intent becomes one of enhancing profits by evading taxes, rather than of satisfying the demand for liquor which the Prohibition Act refused to sanction.

"We think it cannot be said that one who conducts a business with intent to defraud the government of taxes and who probably could not conduct it at a profit if he paid the taxes stands in a different position from that of a person who defrauds a private citizen of property. An intent to steal or defraud in the latter case has repeatedly been held to render an offense one which involves moral turpitude and for which an alien may be deported or excluded under the Immigration laws. *United States ex rel. Robinson* v. *Day,* 2 Cir., 51 F. 2d 1022; *United States* v. *Kellogg,* 58 App. D. C. 360, 30 F. 2d 984, 71 A. L. R. 1210; *Tillinghast* v. *Edmead,* 1 Cir., 31 F. 2d 81; *United States* v. *Burmaster,* 8 Cir., 24 F. 2d 57.

"The strongest argument for the alien is perhaps his own that he was only a 'moonshiner,' but this to us is not persuasive. Fraud has ordinarily been the test whether crimes not of the gravest character involved moral turpitude in the sense of the statute. Here fraud was established by the judgment of conviction. The man was a persistent violator of the revenue laws, with the evident intention of plying a trade that would enable him to make money by defrauding the government of taxes. We cannot say that such a business was not disreputable and did not involve moral turpitude in a sense generally accepted, however lightly 'moonshining' is sometimes regarded."

In the case of *Maita* v. *Haff*, 116 F. 2d 337, decided by the Circuit Court of Appeals in the Ninth Circuit December 18, 1940, it was also held that engaging in the business of a distiller of alcohol with intent to defraud the United States of the taxes on the spirits distilled, is a crime involving moral turpitude.

10 6. It is further averred that the Attorney General by his legally designated officers, having considered the evidence addueed at the relator's hearing and being satisfied that the relator is subject to deportation, on January 11, 1946 issued a warrant of deportation directing that the relator be deported to Italy on the charge that he is subject to deportation under the Immigration Act of February 5, 1917 in that he has been sentenced subsequent to May 1, 1917 to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude, to wit: Violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy); violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy). A copy of the warrant of deportation is attached hereto, identified as Exhibit C and made a part of this return.

7. Your respondent further avers that the decision of the Attorney General is final, as more fully appears from the concluding sentence of Section 19(a) of the Immigration Act of February 5, 1917 (Section 155, Title 8, U. S. C.), which reads as follows: "In every case where a person is ordered deported from the United States under the provisions of this Act or any law or treaty, the decision of the Attorney General shall be final."

8. Your respondent further informs the Court that arrangements were first made to remove the relator to Italy

in accordance with the outstanding warrant of deportation on January 16, 1947 but that on January 10, 1947 the relator, in accordance with his request, was granted a stay of deportation by the Assistant Commissioner of Immigration and Naturalization; that under date of July 27, 1948 the Assistant Commissioner directed your respondent to proceed with the relator's deportation; that your respondent then made arrangements to effect the relator's deportation on November 10, 1948 whereupon he applied for a further stay of deportation to permit him to adjust his personal and business affairs. In accordance with this request the Assistant Commissioner of Immigration and Naturalization on January 18, 1949 granted him a further stay of deportation for thirty days. This extension having expired your respondent again seeks to execute the outstanding warrant of deportation.

9. The following exhibits are attached hereto, made a part of this return and certified to the Court as copies of the record of said relator:

Exhibit "A"—Copy of Warrant of Arrest issued by W. W. Brown, Chief, Warrant Branch, Immigration and Naturalization Service; October 10, 1941.

Exhibit "B"—Transcript of Record of Hearing.

Exhibit "C"—Copy of Warrant of Deportation issued by A. R. Mackey, Chief, Exclusion and Expulsion Section, Immigration and Naturalization Service, Department of Justice, January 11, 1946.

The complete file of the Commissioner of Immigration and Naturalization is also attached hereto and certified to the Court for examination, with the request that leave be granted to your respondent to withdraw the file after the hearing on petition for writ of habeas corpus in order that the file may be returned to the Commissioner.

Wherefore, your respondent, having made a full and true return to the writ of habeas corpus heretofore issued, herein, prays that the said writ of habeas corpus be discharged; that the petition for writ of habeas corpus be dismissed, and that the relator be remanded to the custody of the respondent, Andrew Jordan, to be dealt with according to the law of the United States of America.

Otto Kerner, Jr.,
United States Attorney.

State of Illinois, } ss.
County of Cook. }

Andrew Jordan, being first duly sworn, deposes and says that he is the District Director of Immigration and Naturalization at Chicago, Illinois; that he has read the foregoing return to the writ of habeas corpus and that the statements contained therein are true and correct to the best of his knowledge and belief.

Andrew Jordan.

Subscribed and sworn to before me this 14th day of March, 1949.

Francis M. Symmes,
(Seal) *Notary Public.*

12 Exhibit A.

UNITED STATES OF AMERICA

Department of Justice

Washington

Warrant

For Arrest of Alien.

No. 1100/7736
No. 56090/201

To District Director of Immigration and Naturalization, Kansas City, Mo.

Or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Sam DeGeorge, who entered this country at New York, N. Y. ex SS "Re D'Italia" on the 25th day of April, 1921, has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The act of 1917, in that he has been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term

of one year or more for the commission subsequent to entry of a crime involving moral turpitude, to wit: Violation of Internal Code, Section 88, Title 18 (Conspiracy); violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy).

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1942."

(Seal)

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 10th day of October, 1941.

/s/ W. W. Brown,
Chief, Warrant Branch.

js

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K. C. File 1100/7736
C. O. File 56090/201

Hearing:

Date: May 7, 1942.

Place: U. S. Penitentiary, Leavenworth, Kansas.

Presiding Inspector and Secretary: C. W. Young.

Presiding Inspector to Alien:

Q. Are you able to speak and understand the English language?

A. Yes, sir.

Q. What is your full true and correct name?

A. Sam DeGeorge.

Q. You are advised that I conducted the investigation in your case and it is desired that you state for the record whether you consent to my acting as Presiding Inspector at the hearing under Warrant of Arrest in your case.

A. Well, it doesn't make any difference to me. I have no objection to you giving the hearing.

Q. I have before me Warrant of Arrest issued at Washington, D. C. on October 10, 1941 wherein it is charged that Sam DeGeorge entered the United States on April 25, 1921 and has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The act of 1917, in that he has been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude, to wit: Violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy); violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy), which means in plain language that you are subject to deportation because, since May 1, 1917 and subsequent to your entry into the United States, you have been sentenced more than once to more than one year for crimes involving moral turpitude. Do you understand?

A. Yes, sir.

Q. I now hand this Warrant of Arrest to you for your inspection and will furnish you a copy which you may retain in your possession. Do you fully understand the nature of the charge contained in this warrant?

A. Yes, sir.

Q. You are advised that this Warrant of Arrest which has been handed to you for your inspection, a copy of which has been furnished you, is now entered of record in your case and made a part thereof as Exhibit 1. Do you understand?

A. Yes, sir.

14 Q. You are informed that the purpose of this hearing is to afford you an opportunity to show cause why you should not be deported. Is that clear to you?

A. Yes, sir, I understand.

Q. You are advised that at this proceeding you have the right to be represented by counsel at your own expense if you so desire, which may be an attorney or other person of good moral character. Do you desire to be represented by counsel or otherwise at this hearing?

A. Yes, I do want to be represented by counsel. I have been writing to my attorney in Chicago and he may arrange for an attorney here to represent me. I will let the Immigration Office at Kansas City know as soon as arrangements can be made.

Q. You are advised that the hearing will be continued at this time but you will be expected to advise the District Director of Immigration and Naturalization at Kansas City, Missouri of such arrangements as you have been able to make for an attorney to represent you at the earliest possible time and, in any event, within the next thirty days. Do you think you can do that?

A. I will do the best I can.

Hearing Continued.

I hereby certify that the foregoing is a true and correct record of the proceedings at the warrant hearing in the case of Sam DeGeorge.

/s/ C. W. Young,
Immigrant Inspector.

I hereby certify that the foregoing is a true and correct copy of the record as dictated to me by C. W. Young from his long-hand notes.

/s/ Ada P. Hervey,
Clerk.

15 U. S. Department of Justice

Immigration and Naturalization Service

Chicago, Illinois

Chicago Office File 4136/193
Kansas City Office File 1100/7736
Central Office File 56090/201

Report of Continued Hearing held in Room 990, New Post Office Building, Chicago, Illinois, September 14, 1943.

Present:

E. W. Krause—Presiding Inspector.
J. S. Epstein—Stenotypist.
Sam DeGeorge—Respondent.
Harry P. Gabel—Counsel for Respondent.

Presiding Inspector to Respondent:

Q. Do you speak and understand the English language?
A. Yes.
Q. What is your full and true name?
A. Salvatore Di Giorgio.

Q. Have you ever used or been known by any name other than Salvatore Di Giorgio?

A. I am known under the name of Sam De George.

Q. Have you used any other names besides the one mentioned?

A. Not that I remember.

Q. Are you one and the same Salvatore Di Georgio or Sam De George who was accorded a hearing on May 7, 1942 at the United States Penitentiary, Leavenworth, Kansas?

A. Yes.

Q. At that time, you expressed the desire to be represented by counsel. Have you secured counsel at this time?

A. Yes, Mr. Harry P. Gabel will represent me at this hearing.

Presiding Inspector to Counsel for Respondent:

Q. Will you please state your name and address for the record?

A. Harry P. Gabel, 30 North LaSalle Street, Chicago, Illinois; attorney at law.

Q. Have you filed your appearance in this case?

A. Yes.

16 Q. Are you ready to proceed with this hearing?

A. Yes.

Presiding Inspector to Respondent:

Q. Are you ready to proceed with this continued hearing?

A. Yes.

Q. Will you please stand and raise your right hand. Do you solemnly swear that the statements you are about to make in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

A. Yes.

You are informed that if you wilfully and knowingly give false testimony at this proceeding, you may be prosecuted for perjury, the penalty for which is imprisonment for not more than five years, or a fine of not more than $2,000, or both such fine and imprisonment.

Q. Do you understand?

A. Yes.

Q. When were you released from the United States Penitentiary in Leavenworth, Kansas?

A. The 18th day of January, 1943.

Q. After your release from prison, how were you released by this Service under the Warrant of Arrest?

A. I was released on a thousand dollar bond.
Q. Who furnished your bond?
A. Anthony Perry.
Q. Is Mr. Perry related to you?
A. No, sir.
Q. When you appeared at the hearing before an inspector of this Service at the United States Penitentiary in Leavenworth, Kansas on May 7, 1942, you stated that your full and true name was Sam De George. Is that true?
A. My true name is Salvatore Di Giorgio.
Q. When were you born?
A. November 25, 1904.
Q. Where were you born?
A. In Peoppo, in the Province of Palermo, Italy.
17 Q. Of what country are you now a citizen?
A. Italy.
Q. Have you a passport, birth certificate or any documentary evidence relative to your citizenship?
A. I had a passport but I lost it.
Q. What is your father's name?
A. Gaetano De George.
Q. Where it your father now residing?
A. Peoppo, Italy when I last heard of him. That was about three years ago.
Q. Where was your father born?
A. In Italy.
Q. Of what country is he a citizen?
A. He is a citizen of Italy.
Q. What is your mother's maiden name?
A. Annie Anello.
Q. Where was your mother born?
A. She was born there, too, Italy.
Q. Where is your mother now residing?
A. Peoppo, Italy, as far as I know.
Q. Of what country is your mother a citizen?
A. Italy.
Q. Has your father or mother ever resided in the United States?
A. My dad did, yes.
Q. When did your father reside in the United States?
A. I'm not sure, it was a long time ago, probably thirty or thirty-five years ago.
Q. Do you know whether your father became a citizen of the United States?

A. Not that I know.

Q. Have you any other relatives in Italy besides your parents?

A. Yes, I have one brother, Mateo De George and he was residing in Peoppo, Italy the last I heard of him. I have three sisters, Maria, Theresa and Margareta. They may be married now, I do not know their married names nor do I know where they are residing at the present time.

Q. Have you any relatives in the United States?

A. Yes, I have an uncle, Frank Anello and he is living in Brooklyn, New York. I think the address is 1522
18 Gates Avenue and I also have an uncle in Gary, Indiana, John Anello. I don't remember his address.

Q. Are you married?

A. No.

Q. Have you ever been married?

A. Yes.

Q. What was your wife's maiden name?

A. Ellen Fragelle.

Q. When were you married?

A. June 10, 1928, in Harvey, Illinois.

Q. How did this marriage terminate?

A. By divorce.

Q. When were you divorced?

A. My wife secured a divorce while I was in the United States Penitentiary in Leavenworth, and that was during 1940.

Q. Were there any children by that marriage?

A. Yes, there was one child, his name is Sam De George, Jr. He is now ten and one half years old and he was born in Harvey, Illinois.

Q. What is your religious belief?

A Roman Catholic.

Q. Where were you baptized?

A. In Peoppo, Italy during infancy.

Q. What are the names of churches you have attended in your native country, if any?

A. Roman Catholic Church in Peoppo.

Q. What are the names and locations of schools you have attended in your native country?

A. I went to public school in Peoppo.

Q. What was your last place of residence in Italy?

A. Peoppo, Italy.

Q. When did you leave that address?

A. April 6, 1921.

Q. Where did you go after you left your native country?

A. I came to the United States.

Q. What was the port of embarkation?

A. Naples, Italy.

19 Q. Have you ever lived in any countries other than Italy and the United States?

A. No.

Q. How many entries have you made into the United States?

A. One.

Q. When did you enter the United States?

A. I entered the United States April 25, 1921.

Q. Where did you enter the United States?

A. New York, New York.

Q. What is the name of the ship on which you entered the United States?

A. Re D'Italia.

Q. By whom were you accompanied at the time of your entry?

A. By my aunt, Anna Anello, and she brought her children with her.

Q. Were you inspected by a United States Immigration Officer at the time of your entry?

A. Yes.

Q. Did you pay a head tax?

A. I suppose I did, I don't remember, but I suppose I did.

Q. How old were you at the time of entry?

A. Seventeen.

I will now show you Government Form I-404, which is a Certificate of Admission of Alien issued at the port of New York, New York September 29, 1941, relative to the arrival of one Salvatore Di Giorgio on April 25, 1921 at the above named port on the SS Re D'Italia.

By Presiding Inspector: Let the Record indicate that the respondent and counsel are presented with the aforementioned document for examination.

Presiding Inspector to Respondent:

Q. Does this Certificate relate to you and are the statements made therein correct to the best of your knowledge?

A. Yes, with the exception that they forgot to put my aunt's last name, Anello, only giving her maiden name.

20 You are informed that a copy of this document will now he made part of the record and identified as Exhibit 2.

Q. Do you understand?

A. Yes.

Q. Were you ever refused admission to the United States?

A. No.

Q. Were you ever debarred or deported from the United States?

A. No.

Q. Were you ever arrested in Italy?

A. No.

Q. How many times have you been arrested in the United States?

A. I was first arrested in 1924 in Hammond, Indiana for transporting liquor. I don't know the length of the sentence imposed but I think it was between one and two years. I served seven months of my sentence in the Pendleton Reformatory.

I was arrested again in 1926 in Harvey, Illinois for investigation. I was dismissed the following day.

I was again arrested in 1928 in Harvey, Illinois for investigation purposes, and was dismissed the following day.

In 1931 I was arrested in Jackson, Michigan for transferring license plates and paid a thirty dollar fine in South Marshall, Michigan. Then I was arrested again in 1938.

In May, 1938, in Gary, Indiana, arrested for conspiracy to violate the liquor laws and was taken to Dayton, Ohio, for trial and I pled guilty and I was sentenced by the Court to a year and a day to Atlanta, Georgia. When I was about to be released from Atlanta, Georgia, a detainer was placed against me and I was taken to Fort Wayne, Indiana. I was tried by Judge Slick in the Federal Court in Hammond, Indiana and was given ninety days at Midland, Michigan for liquor violation. While I was serving a sentence at Midland, Michigan, a detainer was placed against me by United States Government from South Bend, Indiana and after my dismissal from Midland, Michigan, I was arrested by the United States Marshal and taken to South Bend. Later on, I was tried at South Bend, Indiana for conspiracy to violate the liquor laws, I was sentenced by the Court on plea of not guilty to two years at Fort Leavenworth, Kansas.

I now show you certified copies of the Indictment

with attached certified copy of judgment and commitment, case #1476, United States *vs.* Sam De George, disclosing that one Sam De George was indicted for the crime of conspiracy to violate the Internal Revenue laws of the
21 United States, committed during the months of February, March and April, 1937. The judgment and commitment further discloses that one Sam De George, in case #1476, was convicted on his plea of guilty on the offense charged in the indictment and committed to a penitentiary for a period of one year and one day.

By Presiding Inspector: Let the record indicate that the respondent and counsel are presented with the aforementioned documents for examination.

Presiding Inspector to Respondent:

Q. Do these documents relate to you and the offense committed by you?

A. It does, yes.

You are informed that these documents will now be made part of the record and identified as Exhibit 3.

Q. Do you understand?

A. Yes.

Q. To what penal institution were you committed for this offense?

A. Atlanta, Georgia.

Q. How long did you serve in that institution?

A. I served nine months and eighteen days.

I further show you certified copies of the Indictment, judgment and commitment, case #1105, United States *vs.* Sam De George, disclosing that one Sam De George was indicted for the crime of conspiracy to violate the Internal Revenue laws of the United States committed during the months of July, August and September, 1939. The judgment and commitment further discloses that Sam De George in case #1105 was convicted on a finding of guilty for the offense of Internal Revenue Conspiracy and sentenced to a term of two years to a penitentiary, the type to be designated by the Attorney General or his authorized representatives.

By Presiding Inspector: Let the record indicate that the respondent and his counsel are presented with the aforementioned documents for examination.

Presiding Inspector to Respondent:

Q. Do these documents relate to you and the offense committed by you?

A. Yes.

You are informed that a copy of this document will now be made part of the record and identified as Exhibit 4.

22 Q. Do you understand?

A. Yes.

Q. In what penal institution did you serve for the offense mentioned in Exhibit 4?

A. Fort Leavenworth, Kansas.

Q. How long did you serve in that institution?

A. Nineteen months and eighteen days.

Q. Is this your entire criminal record?

A. Yes.

Q. Do you wish to make any statements at this time or present any evidence or witnesses to show cause why you should not be deported from this country?

A. When I came to the United States I was seventeen years old and I came to the United States to make it my permanent home. I have never left the United States at any time and I intend to stay in the United States if they let me. I have never committed any crime of violence, I have always been employed.

In 1928 I married an American citizen, Ellen Fragelle, and I thought that made me a citizen of the United States. I lived with her, had two children, one died, that was when he was four years old and I have one at the present time. He is ten and a half years old. During the time that I was serving on my sentence, my wife became ill and she decided to get a divorce. We were married in 1928 up to 1940. I am still supporting the child without any orders from the court. I love my child and I don't want my child to be separated from me or feel that his father was anything but a loyal person to the United States of America. I also want to be near my child.

I also registered under every act as requested by the Government and I have no sympathy or feeling toward my mother country. I went to my local draft board and volunteered for service in the United States military forces. They refused to accept me on account of my age, thirty eight years of age. I am willing to join the forces of the United States at this time or at any time and serve in any way and in any place where they might want me to. I realize that I made a mistake in doing the things that I did although I would never commit any crime of violence to any one. I have learned my lesson and it has been a

bitter one and if I am given an opportunity I will always obey the laws of the United States and all other laws of the locality where I may live. I am engaged in a lawful business at the present time and I am going to continue in this manner the rest of my life.

23 Presiding Inspector to Respondent:

Q. Did you register under the Alien Registration and Selective Service Acts?

A. Yes.

By Presiding Inspector: Presents Alien Registration Receipt Card #3767294 issued to Sam De George, 15529 Halsted Street, Harvey, Illinois.

Further presents Selective Service Registration Certificate disclosing that one Sam De George was duly registered on October 16, 1940 at Local Board #12, Lansing, Illinois. (Documents returned.)

Presiding Inspector to Respondent:

Q. You stated previously that you have one living child by a former marriage. Are you supporting this child at the present time?

A. Yes.

Q. Have you always supported that child with the exception when you served time in the penal institutions for the offenses committed by you?

A. Yes.

Q. How much do you contribute toward your child?

A. About forty dollars a month.

Q. Were you required by court order to pay toward the upkeep of your child?

A. No, it is voluntary, I do it of my own free will.

Q. Are you employed at the present time?

A. Yes.

Q. By whom are you employed?

A. By Louis Geoncodo, it is a tavern and a restaurant located at 15410 Park Avenue, Harvey, Illinois.

Q. In what capacity are you employed?

A. As chief bartender.

Q. What is your weekly income?

A. Forty dollars a week.

Q. Do you own any property?

A. No.

Q. Have you any other sources of income besides your regular wages?

A. No, sir.
24 Q. Have you any money in the bank?
A. No.
Q. Do you own any stocks or bonds?
A. No.
Q. Does any one owe you money?
A. No.
Q. Do you owe money to any one?
A. No.
Q. Are you in good health, physically and mentally?
A. Yes.
Q. In the event you are ordered deported, to whom do you wish to go?
A. To my parents in Peoppo, Italy.
Q. Do you have any baggage or other personal belongings you wish to take with you?
A. Yes, personal belongings, trunk and suitcase.

Presiding Inspector to Counsel for Respondent:

Q. Do you wish to question the respondent?
A. Yes.

Counsel to Respondent:

Q. Mr. De George, you have been referred to in this matter as Salvatore Di Giorgio?
A. Yes.
Q. That was the name that was given you in Italy; is that correct?
A. Yes.
Q. As a boy?
A. Yes.
Q. After your arrival in the United States, did you ever assume or use that name, Salvatore Di Giorgio?
A. No, sir.
Q. You have always been known by Sam De George?
A. Yes.
Q. And you were married under what name?
A. Sam De George.
Q. And your child is known by what name?
A. Sam De George, Jr.
25 Q. Now, you have with you two letters, one from the Chief of Police at Harvey, Illinois, written by Sgt. George Kaur, regarding yourself and another letter written by Mr. Athens who is a real estate man. Do you wish to give these letters to the Inspector?

A. Yes.

By Counsel: Mr. Inspector, I am now handing you two letters relating to the respondent and ask that they be made part of the record.

By Presiding Inspector: The letters referred to will now be made part of the record and identified as Exhibits 5 and 6 respectively.

Presiding Inspector to Counsel for Respondent:

You are informed that you will be furnished with a copy of the Findings, Conclusion of Law and Proposed Order as soon as completed and you will be allowed ten days in which to file exceptions thereto in writing.

Q. Do you understand?

A. Yes.

Presiding Inspector to Respondent:

You are informed that under the Act of March 4, 1929 as amended, you will, if ordered deported and thereafter enter or attempt to enter the United States be guilty of a felony and upon conviction be liable to imprisonment for not more than two years or a fine of not more than $1,000, or both such fine and imprisonment unless following your departure from the United States in pursuance of an order of deportation, you receive permission from the Attorney General of the United States to apply for admission after one year from date of such departure.

Q. Do you understand?

A. Yes.

Continued Hearing Closed.

Description:

Height, 5' 7".
Weight, 165 lbs.
Hair, Dark Brown.
Eyes, Blue.
No Visible Marks of Identification.

I, the undersigned, certify that the foregoing typewritten pages 3-13 inclusive is a full, true and accurate transcript of the Stenotype notes taken in this case by me at Chicago, Illinois, September 14, 1943.

J. S. Epstein,
Stenotypist.

26 Exhibit 1.

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

Washington

Warrant

For Arrest of Alien

No. 1100/7736
No. 56090/201

To District Director of Immigration and Naturalization, Kansas City, Mo., or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien, Sam DeGeorge, who entered this country on the 25th day of April, 1921, at New York, N. Y., ex SS "Re D'Italia" has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The act of 1917, in that he has been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude, to wit: Violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy); violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy).

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1942."

(Seal)

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 10th day of October, 1941.

/s/ W. W. Brown,
Chief, Warrant Branch.

js

27 **Exhibit 2.**

Certificate of Admission of Alien.

This Form Is Insufficient As A Basis For A Petition For Naturalization.

59598/717
(1100/7736)

Port of New York, N. Y.
Date September 29, 1941
District Director
Immigration and Naturalization Service
Kansas City, Missouri

I Hereby Certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien named below:

(1) Manifest No., 6761; Class, III, Naples;
(2) S. S., Re D'Italia; Line, Lloyd Cabando;
(3) Port at which admitted, New York, N. Y.; Date, 4/25/21;
(4) Name, D' Giorgio, Salvatore; Age, 17; Sex, male;
(5) Married, single; Occupation, constr.; Able to read, yes; Write, yes;
(6) Citizen of, Italy; Race, South;
(7) Place of birth, Ponreale, Palermo;
(8) a. Class of immigration ...;
visa, ...; No. ...; Issued at ...; Date, ...;
b. Transit Certificate No. ..; Issued at ..; Date,..;
(9) Last permanent residence, Pontreale, Palermo;
(10) Name and complete address of nearest relative or friend in country whence alien came, father: Gaetano Di Giorgio;
(11) Destination, Brooklyn, New York; By whom passage paid, self; Money brought, $2;
(12) Whether in U. S. before, no; When, ...; Where, ...;
(13) Whether going to relative or friend, Uncle; Give name and complete address: Giacomo Anello, 1522 Gates Ave., Brooklyn, New York;
(14) Purpose of coming to U. S., Permanent; Intended length of stay, ;
(15) Condition of health, good;

(16) Height, 5'3"; Complexion, rosy; Color of hair, brown;
(17) Color of eyes, brown; Identification marks, ...;
(18) Examined by Inspector Macatee;
(19) Accompanied by Anna Barrito, female, age 32 Mattes Annello, M. 8 Margherita Anello, F. 6 Gaspere, Anello, M. 2 Concetta Anello, F. 2; How admitted, Primary;
(20) Remarks: Head tax paid.

(Signature) /s/ Byron R. Uhl,
(Official title) *District Director,*
New York District.

28 Exhibit 3.

DISTRICT COURT OF THE UNITED STATES.

Southern District, Ohio, Western Division,

Dayton, Ohio.

United States
vs.
Sam DeGeorge, *et al.*

No. 1476 Criminal Indictment in One counts for violation of U. S. C., Title 18, Secs. 88

JUDGMENT AND COMMITMENT.

On this 27th day of May, 1938, came the United States Attorney, and the defendant Sam DeGeorge appearing in proper person and .....

.....

The defendant having been convicted on his plea of Guilty of the offense charged in the indictment in the above-entitled cause, to wit:

Conspiracy to violate Internal Revenue Laws of the United States, (Liquor)

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered And Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the Penitentiary type to be designated by the Attorney General or his authorized representative for the period of One (1) Year and One (1) Day.

and that said defendant be further imprisoned until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

O. K. (Signed) Francis C. Canny,
U. S. Attorney.

(Signed) (Signed) Nevin,
United States District Judge.

A True Copy. Certified this 27th day of May, 1938.
(Signed) (Signed) Harry F. Rabe,
Clerk.
(By) (Signed) F. H. Rickett,
Deputy Clerk.

29

Criminal
No. 1476

IN THE DISTRICT COURT OF THE
UNITED STATES OF AMERICA

For the Southern District of Ohio,

Western Division.

Southern District of Ohio, } ss:
Western Division.

Of the May Term in the year nineteen hundred and thirty-seven.

First Court:
Section 88,
Title 18,
United States Code.

The Grand Jurors of the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern Judicial District of Ohio, at the May Term thereof, in the year nineteen hundred and thirty-seven, and inquiring for that

division and district, upon their oaths and affirmations present:

That Roy W. Allender, Ray L. Boyer, Pasquale Caruso, Sam DeGeorge, Tony Genna, Nick Giordano, Harry R. King, Walter W. Lee, Jr., and George P. Mosier, hereinafter referred to as defendants, and divers other persons to these Grand Jurors, from on or about, to wit, the nineteenth day of November, in the year nineteen hundred and thirty-six and thence continuously to and including the second day of May in the year nineteen hundred and thirty-seven, in the Counties of Clark, Greene and Montgomery, in the State of Ohio, in the Western Division of the Southern Judicial District of Ohio, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously did conspire, combine, confederate and agree together, each with the other, and with divers other persons to these Grand Jurors unknown, to commit divers offenses against the Internal Revenue Laws of the United States, to-wit: to violate Sections 1152(a), 1155(f), 1162, 1163, 1164, 1165, 1170, 1182, 1287, 1397(a), 1440, and 1441 of Title 26, United States Code Annotated, that is to say, the said defendants and co-conspirators, did conspire, combine, confederate and agree together, each with the other and with divers other persons to these Grand Jurors unknown;

to possess and transport spirituous liquors, to-wit, whiskey and alcohol, with having affixed to the containers of said spirituous liquors the Internal Revenue stamps denoting the quantity thereof and payment of the taxes thereon;

to carry on the business of distillers and to defraud the United States of the tax on the liquors distilled by them;

to have in their possession, control and custody stills and distilling apparatus, set up without registering the same as required by law;

to neglect and refuse to give the required notice of their intention to engage in the business of distilling liquors;

to neglect and refuse to give the required notice of their intention to engage in the business of rectifying liquors;

to carry on the business of distillers without giving the required bond;

to carry on the business of distilling liquors in buildings other than authorized distilleries;

to operate distilleries and rectifying plants without displaying the required signs on the premises;

to unlawfully remove and conceal spirituous liquors, to wit, whiskey and alcohol;

to carry on the business of rectifiers of spirituous liquors, to wit, whiskey and alcohol, without having paid the special statutory tax;

to possess spirituous liquors, to wit, whiskey and alcohol; with intent to sell it in fraud of law and evade the tax thereon;

to remove and conceal distilled spirits, to wit, whiskey and alcohol, with intent to defraud the United States of the tax thereon.

Overt Acts.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do say that in furtherance of said unlawful agreement, combination and conspiracy, and
31. for the purpose of accomplishing said unlawful purposes as hereinbefore charged, the said defendants, at the time and places hereinafter set forth, did commit the following overt acts, to-wit:

1. That the defendants, Sam De George and Pasquale Caruso directed the manufacture of illicit spirituous liquors, to wit, whiskey and alcohol, in a distillery in the basement of the dwelling house occupied by Walter S. Lee, Jr., defendant herein, in Greene County, Ohio, during the months of February, March and April, 1937;

2. That on or about February 1, 1937, the defendant, Walter S. Lee, Jr., rented the basement of his dwelling house in Greene County, Ohio, to the defendants, Sam DeGeorge, and the defendant, Walter S. Lee, Jr., accepted payment of the rent for a period of three months from said defendant, Sam DeGeorge.

3. That on or about November 19, 1936, the defendants, Ray L. Boyer and Harry R. King, rented a cottage at Crystal Lake New Carlisle, Clarke County, Ohio, and from said 19th day of November, 1936, until the first day of May, 1937, in and at said cottage possessed, stored and concealed large quantities of spirituous liquors, to wit, whiskey and alcohol, in containers to which Internal Revenue stamps denoting the quantity thereof and the payment of the taxes thereon had not been affixed.

4. That on or about February 1, 1937, the defendants, Pasquale Caruso and Tony Genna, went to the Lee farm in Greene County, Ohio, and began work on the part of

the premises rented of Walter S. Lee, Jr., fitting it for a still site and setting up a still.

4. That on or about February 1, 1937, the defendant, Pasquale Caruso, rented farm buildings, or space in farm buildings, on land of Lida M. Brewer in Greene County, Ohio; paid Lida M. Brewer the sum of fifteen dollars as one month's rent and used the said farm buildings to house or harbor men who worked at the defendant's illicit distilleries and for the storage of materials used in said illicit distilleries of the defendants.

6. That on or about April 9, 1937, the defendants, 32 Nick Giordano and Tony Genna, operated the distillery in the basement of the house of Walter S. Lee, Jr., in Greene County, Ohio.

7. That on or about March 1, 1937, the defendants, Roy W. Allender and Harry R. King, attempted to rent and enter into negotiations with the defendant, George R. Mosier, for the rental of farm in Bethel Township, Clarke County, Ohio, for use as a still site and for storing and concealing illicit spirituous liquors, to wit, whiskey and alcohol.

8. That on or about April 2, 1937, defendant George Mosier rented the defendant Roy W. Allender the granary on his farm in Bethel Township, Clarke County, Ohio, which granary the defendants herein used for the storage, concealment and possession of illicit spirituous liquors, to wit, whiskey and alcohol.

9. That on or about February 1, 1937, defendant Roy W. Allender attempted to rent the farm premises of C. H. Burchan, stating to said Burchan that the building was desired by two men who were accompanying him, who wanted to store some liquor.

10. That on or about February 16, 17 and 18, 1937, the defendants, Pasquale Caruso and Tony Genner, constructed and set up a still in the basement of the home of Walter S. Lee, Jr., in Greene County, Ohio.

11. That on or about February 20, 1937, defendants, Harry R. King and Ray L. Boyer, stored in the cottage at Crystal Lake, Clarke County, Ohio, rented to them, ten 100-lb. bags of sugar that were used in the manufacture of illicit spirituous liquors, to wit, whiskey and alcohol.

12. That on March 13, 1937, the defendant Harry R. King, purchased a 1937 model, Ford Coupe, motor No. 18-

3709533, from Transportation Twins, Inc., of Dayton, Ohio; secured 1937 Ohio license 459 Q. G. for said car and used it in trips in and out of the rectifying plant in the basement of the cottage at Crystal Lake, New Carlisle, Ohio, and in transporting filled 5-gallon cans from the granary rented from the defendant, George R. Mosier.

13. That on March 15, 1937, the defendant, Ray L. Boyer, had in his possession an electric motor and shaft at Midway, Ohio, on which he had work done, after
33 which he removed said equipment from Midway, Ohio, to the distillery in the basement of the residence at the home of Walter S. Lee, Jr., in Greene County, Ohio, and used said equipment on said distillery.

14. That on March 26, 1937, the defendant Roy W. Allender hauled twelve loads of cinders to the George R. Mosier Farm in Greene County, Ohio, spreading the same on the farm lane and about the granary which the defendants herein used for the storage of tax-unpaid or illicit liquors, to wit, whiskey and alcohol.

15. That on April 6, 1937, defendant Ray L. Boyer, purchased a 1937 model, Ford coupe, motor No. 18-3799955 from Bryant Motor Sales, Kenia, Ohio, procured Ohio license plates 687 S. F. for said automobile and used said car for the operating of a rectifying plant in the cottage which he occupied at Crystal Lake, New Carlisle, Clarke County, Ohio.

Conclusion.

And so the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do say that said defendants, throughout the period of time, and in places, manner and form aforesaid, unlawfully and feloniously did conspire to commit offenses against the United States, and did do acts to effect the objects of the conspiracy;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

James H. Cleveland,
Asst. United States Attorney, S.D.O.

The following endorsement appears on the back of the original Indictment:

"A true bill,
James Rogers,
Foreman.

34 **Exhibit 4.**

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Indiana,

Fort Wayne Division.

December Term, A. D., 1939.

United States of America, *vs.* Matthew Salvatore Anello, alias Mathew Norrito, alias Mathew Bruno, alias Matthew Anello, alias Matthew S. Anello, alias Matthew S. Annello, alias Joe Lorenszo, alias Matt, alias Johnnie; Sam DeGeorge, alias Sam DiGeorge, alias Sam Fosso, alias Sam Bello; Ralph C. Glenn, alias Raphael Glenn, alias "R. C.", alias Joe Turner, alias "tex."; Gregory Joseph Griffo, alias "Gig"; George Juszczyk, alias Adolph; Joe DeGeorge, alias Joe DiStefano, alias George DiStefano, alias Joe George, alias "Joe", alias "George", alias Joe Termine; Joe Messina, alias "Joe", alias Mike Faro; Thomas Morgano, alias Tommy Morgano, alias Tom Morgano, alias Thomas Margano; Charles Panno, alias "Frankie".	Criminal No. 1105.

The Grand Jurors of the United States, within and for the Northern District of Indiana, impaneled, sworn and charged in said Court, at the term and division aforesaid, to inquire for the United States for the Northern District of Indiana, upon their oaths charge and present
35 that: Matthew Salvatore, Anello, alias Mathew Norrito, alias Mathew Bruno, alias Matthew Anello, alias Matthew S. Anello, alias Matthew S. Annello, alias Joe

Lorenzo, alias Matt, alias Johnnie; Sam DeGeorge, alias Sam DiGeorge alias Sam Fosso, alias Sam Bello; Ralph C. Glenn, alias Raphael Glenn, alias "R. C.", alias Joe Turner, alias "Tex".; Gregory Joseph Griffo, alias "Gig"; George Juszczyk, alias Adolp; Joe De George, alias Joe DiStefano, alias George DiStefano, alias Joe George, alias "Joe", alias "George", alias Joe Termine; Joe Messina, alias "Joe", alias Mike Faro; Thomas Morgano, alias Tommy Morgano, alias Tom Morgano, alias Thomas Margano; Charles Panno, alias "Frankie" hereinafter called defendants, late of said district, at and in the South Bend Division of said district and within the jurisdiction of this court on or about the 15th day of July, 1939 and thereafter continuously up to and including the date of this indictment, did then and there unlawfully, knowingly, wickedly, corruptly and feloniously conspire, combine, confederate, arrange and agree together and with divers other persons whose names are to the Grand Jurors unknown to violate the Internal Revenue Laws of the United States by the commission of various offenses against the United States of America and the laws thereof, which said offenses were that said defendants and said persons unknown, would then and there and thereafter in the state of Indiana, Illinois, Kentucky and Ohio and within the South Bend Division of the Northern District of Indiana unlawfully, knowingly, and willfully defraud the United States of tax on distilled spirits, carry on the business
36 of a retail and wholesale liquor dealer in distilled spirits without having paid the special tax as required by law; remove and aid in the removal of distilled spirits, on which the United States Internal Revenue Tax had not been paid, to a place other than a distillery warehouse or other bonded warehouse provided by law; conceal and aid in the concealment of said spirits so removed; carry on the business of a distiller without having given bond as required by law; possess a still set up which still was not then and there registered as required by law; make mash fit for distillation or for the production of distilled spirits on premises other than a distillery duly authorized according to law; and possess and transport distilled spirits, to-wit: Four Thousand Six Hundred Seventy-Five (4,675) gallons of alcohol and other quantities of distilled spirits, the exact amount being to the Grand Jurors unknown, the immediate containers of which distilled spirits did not then and there have affixed thereto stamps de-

noting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue Taxes imposed on said spirits as required by law.

And the Grand Jurors aforesaid further present and charge that in furtherance of said conspiracy, as aforesaid, and to effect the object thereof and within the venue aforesaid, the following named defendants did and performed the following overt acts:

(1) On or about the 1st day of September, 1939 in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana defendant Sam DeGeorge, alias Sam DiGeorge, alias Sam Fosso, alias Sam Bello did then and there have a conversation with defendants Gregory Joseph Griffo, alias "Gig" and Matthew Salvatore Amello, alias Mathew Norrito, alias Mathew Bruno, alias Matthew Anello, alias Matthew S. Anello, alias Matthew S. Annello, alias Joe Jorenzo, alias Matt, alias Johnnie wherein he, the said defendant Sam DeGeorge, alias Sam DiGeorge, alias Sam Fosso, alias Sam Bello directed the said defendants Gregory Joseph Griffo, alias "Gig" and Matthew Salvatore Anello, alias Mathew Norrito, alias Mathew Bruno, alias Matthew Anello, alias Matthew S. Anello, alias Matthew S. Annello, alias Joe Lorenzo, alias Matt, alias Johnnie to transport a certain quantity of alcohol, to-wit: Three Hundred Twenty-Five (325) gallons, the immediate containers of which alcohol did not then and there have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue Taxes im-
37 posed on said spirits as required by law.

(2) On or about the 3rd day of September, 1939 in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, defendant Sam DeGeorge, alias Sam DiGeorge, alias Sam Fosso, alias Sam Bello had a telephone conversation with defendant Gregory Joseph Griffo, alias "Gig" at Covington, Kentucky.

(3) On or about the 16th day of July, 1939, the defendant Charles Panno, alias "Frankie" in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, did then and there perform manual labor on a certain still, being then and there erected on the farm premises owned by defendant George Juszczyk.

(4) On or about the 16th day of July, 1939, in the

County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana defendants Matthew Salvatore Anello, alias Matthew Norrito, alias Mathew Bruno, alias Matthew Anello, alias Matthew S. Anello, alias Matthew S. Anello, alias Joe Lorenzo, alias Matt, alias Johnnie and Joe DeGeorge, alias Joe DiStefano, alias George DiStefano, alias Joe George, alias "Joe", alias "George", alias Joe Termine and Charles Panno, alias "Frankie" within the said Starke County, State of Indiana, did then and there transport certain vats, pipes, a boiler, and a column to be used in a still, the exact description of said vats, pipes, boiler, and column being to the Grand Jurors unknown.

(5) On or about the 1st day of September, 1939 in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana defendant Matthew Salvatore Anello, alias Mathew Norrito, alias Mathew Bruno, alias Matthew Anello, alias Matthew S. Anello, alias Matthew S. Anello, alias Joe Lorenzo, alias Matt, alias Johnnie possessed and transported in a certain automobile, to-wit: a Ford Truck, Three Hundred and Twenty Five (325) gallons of alcohol, the immediate containers of which alcohol did not then and there have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue Taxes imposed on said spirits as required by law.

(6) On or about the 20th day of August, 1939 in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, defendant Thomas Morgano, alias Tommy Morgano, alias
38 Tom Morgano, alias Thomas Margano had a conversation with defendant Gregory Joseph Griffo, alias "Gig" concerning the employment of defendant Gregory Joseph Griffo, alias "Gig" by the said defendant Thomas Morgano, alias Tommy Morgano, alias Tom Morgano, alias Thomas Margano.

(7) On or about the 15th day of July, 1939, in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, defendant Joe DeGeorge, alias Joe DiStefano, alias George Di Stefano alias Joe George, alias "Joe", alias "George", alias Joe Termine paid George Juszczyk, alias Adolph, the sum of Fifty and 00/100 ($50.00) Dollars.

(8) On or about the 15th day of August, 1939, in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, defendant Joe DeGeorge, alias Joe Di Stefano, alias George DiStefano, alias Joe George, alias "Joe", alias "George", alias Joe Termine transported by automobile a certain quantity of sugar, to-wit: One Hundred Fifty (150) bags to the farm premises owned by George Juszczyk, alias Adolph within the said County of Starke, State of Indiana.

(9) On or about the 10th day of October, 1939, in the county of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, defendant Ralph C. Glenn, alias Raphael Glenn, alias "R. C.", alias Joe Turner, alias "Tex", possessed and transported by automobile One Hundred Fifty (150) gallons of alcohol, the immediate containers of which alcohol did not then and there have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue Taxes imposed on said spirits as required by law.

(10) On or about the 10th day of October, 1939, in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, defendant Joe Messina, alias "Joe", alias Mike Faro did then and there operate a certain still set up which said still was not then and there registered as required by law and which said still was then and there set up on the farm premises owned by the said George Jusczyk, alias Adolph and located in the said county of Starke, State of Indiana.

39 (11) On or about the 10th day of October, 1939, in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, defendant Gregory Joseph Griffo, alias "Gig" possessed and transported by a truck a certain quantity of distilled spirits, to wit, One Hundred Fifty and 00/100 (150) gallons of alcohol, the immediate containers of which alcohol did not then and there have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue taxes imposed on said spirits as required by law.

(12) On or about the 15th day of October, 1939, in the County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, defendant George Jusczyk, alias Adolph did then and there mix

certain mash fit for distillation, the exact amount being unknown to the Grand Jurors, which mash was then and there on the farm owned by the said defendant George Juszczyk, alias Adolph and located within the County of Starke, State of Indiana.

(13) On or about the 24th day of August, 1939 at and in the town of North Judson, County of Starke, State of Indiana, and within the South Bend Division of the Northern District of Indiana, defendant Thomas Morgano, alias Tommy Morgano, alias Tom Morgano, alias Thomas Margano paid the sum of Seventy-Five and 00/100 ($75.00) dollars to one Joseph J. Vessely for the purchase of a certain 1931 Model A Ford Sedan Automobile.

Contrary to the form of the statute, in such cases made and provided and against the peace and dignity of the United States of America.

James R. Fleming,
United States Attorney.

40 Certified Copy.

United States of America,
Northern District of Indiana. }

I, Margaret Long, Clerk of the United States District Court in and for the Northern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of the original Judgment And Commitment; In The Matter of: United States *vs.* Matthew Salvatore Anello, et al. Criminal No. 1105 now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at South Bend this 8th day of September, A. D. 1941.

Margaret Long,
Clerk,
By (signed) Clinton L. Milliken,
Deputy Clerk.

(Seal)

41 DISTRICT COURT OF THE UNITED STATES

Northern District, South Bend,

Indiana Division.

United States *vs.* Matthew Salvatore, Anello, Ralph C. Glenn, Sam DeGeorge, Gregory Joseph Griffo, George Juszck, Joe DeGeorge, Joe Messino, Thomas Morgan.	No. 1105 Criminal Indictment in one (1) count for violation of U. S. C. Title 18, Secs. 88.

JUDGMENT AND COMMITMENT.

On this 6th day of June, 1941, came the United States Attorney, and the defendant Sam DeGeorge appearing in proper person, and By Counsel and,

The defendant having been convicted on Finding of guilty by court of the offense charged in the Indictment in the above-entitled cause, to wit: Violation of Internal Revenue Code, Section 88, Title 18, Sentenced On One (1) Count, Of Indictment Finding Of Guilty, "Internal Revenue Conspiracy" and the defendant having been now asked whether He has anything to say why judgment should not be pronounced against Him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered And Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the Penitentiary, type to be designated by the Attorney General or his authorized representative for the period of Two (2) Years. Sentence To Begin With Date Of Judgment.

It is Further Ordered that

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) Thos. W. Slick,
United States District Court.

A True Copy. Certified this 11th day of June, 1941.

(Signed) Margaret Long,
Clerk,

(By) Mary Sweeney,
Deputy Clerk.

6-11-41 Alex Campbell,
U. S. Attorney.

United States
vs.
Sam DeGeorge.

No. 1105 Criminal Indictment
One (1) count for violation of
U. S. C., Title 18, Sec. 88.

Return.

I have executed the within Judgment and Commitment as follows:

Defendant delivered on June 6, to St. Joseph County.

Defendant noted appeal on ..... and released (date) .....

Defendant's appeal determined on (date) .....

Defendant surrendered on (date) .....

Defendant delivered on June 13, to U. S. Penitentiary at Leavenworth, Kansas, the institution designated by the Attorney General, together with certified copy of the within Judgment and Commitment.

Al. W. Hosinski,
Marshal,
By Charles F. Banff,
Deputy Marshal.

42 Certified Copy.

United States of America,
Northern District of Indiana. } ss.

I, Margaret Long, Clerk of the United States District Court in and for the Northern District of Indiana, do hereby certify ~~that the~~ annexed and foregoing is a true and full copy of the original Indictment; in the Matter of: United States *vs.* Matthew Salvatore Anello, etc. et al. Criminal No. 1105. now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at South Bend this 9th day of September, A. D. 1941.

Margaret Long,
Clerk,
By (signed) Clinton L. Milliken,
Deputy Clerk.

(Seal)

43 **Exhibit 5.**

City of Harvey,
Incorporated 1891.

August 2, 1943,
Harvey, Illinois.

To whom it may concern. This is to certify that bearer Sam De George has no record on file in this office.

Chief /s/ Albert Roll,
Harvey Police Dept.
Per Sgt. George Kaur.

copy.

44 **Exhibit 6.**

Treen Agency
Realtors
Real Estate
Building Loans Sales
Management

Phone
Harvey 222
192 East 154th
Harvey, Illinois

To Whom It May Concern.

Sam De George has resided in Harvey, Illinois for the past 20 years, which time I have known him.

I have known him to always be a good citizen with the exception that during the probation days he became mixed with bad company and violated the liquor law. Outside of that I know nothing against him. He is a hard working man and believe him to be a good citizen. I recommend him.

/s/ P. R. Athens.

Serving Harvey's 18,000 People for 18 Years.

45 Exhibit C.

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

Philadelphia, Pa.

Warrant—Deportation of Alien.

4136/193
No. 56090/201

To: District Director of Immigration and Naturalization, Chicago, Illinois

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, after due hearing before an authorized immigrant inspector, and upon the basis thereof, an order has been duly made that the alien Salvatore DiGiorgio alias Sam De George who entered the United States at New York, New York, ex SS "Re D'Italia" on the 25th day of April, 1921 is subject to deportation under the following provisions of the laws of the United States to wit: The Act of 1917, in that he has been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year, or more for the commission subsequent to entry of a crime involving moral turpitude, to wit: Violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy); violation of Internal Revenue Code, Section 88, Title 18 (Conspiracy).

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to deport the said alien to Italy, at the expenses of the appropriation, "Salaries and Expenses, Immigration and Naturalization Service, 1946," including the expenses of an attendant, if necessary. It is further ordered that execution of the warrant be deferred for a period of six months to allow the alien to apply for a pardon.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 11th day of January, 1946.

A. R. Mackey,
Chief Exclusion and Expulsion Section.

46 Department of Justice Immigration And Naturalization No. 56090

No. 201

Docket Card Made.

Endorsed: In the District Court of the United States. * * (Caption—49-C-406) * * For A Writ Of Habeas Corpus.

47 And afterwards, to wit, on the 3rd day of October, 1949, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

48 IN THE UNITED STATES DISTRICT COURT.

* * * (Caption—49-C-406) * *

This cause having been heretofore taken under advisement on the petition for a Writ of Habeas Corpus and the Return to the Writ, after due deliberation and the Court being now fully advised in the premises hands down its opinion orally from the bench and in accordance therewith it is

Considered And Ordered that the petition herein for a Writ of Habeas Corpus be and it is hereby dismissed and that the petitioner be and he is hereby remanded to the custody of the respondent.

49 And on the same day, to wit, the 3rd day of October, 1949 came the Relator-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Notice Of Appeal in words and figures following, to wit:

50 IN THE DISTRICT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

In the Matter of the Application of Sam DeGeorge for a Writ of Habeas Corpus. } No. 49 C 406.

Roy H. Johnson, Clerk U. S. District Court.

NOTICE OF APPEAL.

To:

Otto Kerner, Jr., United States Attorney, Chicago, Illinois;

Andrew Jordan, District Director, Chicago, Illinois.

Notice Is Hereby Given that Sam DeGeorge, Relator in the above entitled cause, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the Decision of the District Court of the United States, for the Northern District of Illinois, Eastern Division, by the Honorable William J. Campbell of said Court, entered on the 3rd day of October, 1949, wherein the Court held that a conspiracy to violate the Internal Revenue Code involves moral turpitude, and the Court dismissed the Writ of Habeas Corpus.

Thomas F. Dolan,
Attorney for Appellant.

Received copies of the foregoing Notice of Appeals this ..... day of ....., 1949.

.....
United States Attorney.

.....
District Director.

(Certificate of Mailing Attached Hereto):

51 United States of America, }
Northern District of Illinois. } ss.

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on October 3, 1949, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to

Hon. Otto Kerner, Jr., U. S. Attorney;
450 U. S. Court House,
Chicago 4, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 3rd day of October, A. D., 1949.

Roy H. Johnson,
Clerk,
By Gizella Butcher,
Deputy Clerk.

(Seal)

52 And on the same day, to wit, the 3rd day of October, 1949 came the Appellant by his attorneys and filed in the Clerk's office of said Court his certain Designation Of Short Record in words and figures following, to wit:

53 In the District Court of the United States.
* * (Caption—49-C-406) * *

DESIGNATION OF SHORT RECORD.

To: Roy Johnson, Clerk United States District Court.

You are requested to include in such transcript of the short record the following papers:

1. Application on Petition for Writ.
2. Opinion of Honorable William J. Campbell.
3. Notice of Appeal.
4. Return of Writ.

Thomas F. Dolan,
Attorney for Appellant.

October 3rd, 1949.

54 United States of America,
Northern District of Illinois. } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete short record of the transcript of proceedings had in the cause entitled: In the Matter of the Application of Sam De George, For a Writ of Habeas Corpus; No. 49 C 406, made in accordance with the Designation of Short Record filed in said cause, consisting of true, correct and complete copies of the originals now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 3rd day of October, 1949.

Roy H. Johnson,
Clerk,
By Gizella Butcher,
Deputy Clerk.

(Seal)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

I, KENNETH J. CARRICK, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of record, filed March 31, 1950, in

Cause No. 10016

U. S. A. EX REL. SAM DE GEORGE

vs.

ANDREW JORDAN, DISTRICT DIRECTOR, ETC.

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this ninth day of September, A. D. 1950.

KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit,
By R. HAYS BLANCHARD,
Chief Deputy Clerk.

[SEAL.]

At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the fifth day of October, in the year of our Lord one thousand, nine hundred and forty-eight, and of our Independence the one hundred seventy-third.

No. 10016

UNITED STATES OF AMERICA, EX REL. SAM DE GEORGE, RELATOR-APPELLANT

vs.

ANDREW JORDAN, DISTRICT DIRECTOR OF THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, CHICAGO, ILLINOIS, RESPONDENT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

And afterward, to-wit, on the tenth day of July, 1950, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OCTOBER TERM, 1949, APRIL SESSION, 1950

No. 10016

UNITED STATES OF AMERICA, EX REL. SAM DE GEORGE, RELATOR-APPELLANT

vs.

ANDREW JORDAN, DISTRICT DIRECTOR OF THE UNITED STATES IMMIGRATION AND NATURALIZAION SERVICE, DEPARTMENT OF JUSTICE, CHICAGO, ILLINOIS, RESPONDENT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

July 10, 1950

Before MAJOR, Chief Judge; LINDLEY and SWAIM, Circuit Judges

SWAIM, *Circuit Judge:*

This appeal is from an order of the District Court dismissing the application of Sam De George, relator, for a writ of *habeas corpus*.

The appellant, Sam De George, in 1921, when he was 17 years of age, entered this country from Italy. In 1928 he married an American citizen, and to this marriage two children were born. One died and the other, now 18 years of age, is a student in an American university. The relator has resided in Harvey, Illinois, for many years and has no police record in that town. A real estate man of Harvey, Illinois, wrote a letter for relator to use in his deportation hearing in which he said that he had known the relator for twenty years, during which time the relator had always been a good citizen "with the exception that during the prohibition days he became mixed up with bad company and violated the liquor laws."

In 1938 on his plea of guilty the relator was sentenced for a period of 1 year and 1 day on a charge of violating §88 of Title 18 U. S. C., 18 U. S. C. §88. The indictment charged a conspiracy to violate §3321 of Title 26 U. S. C., 26 U. S. C. A. §3321, in that the relator conspired to remove and conceal distilled spirits with intent to defraud the United States of tax thereon. On this first sentence he served 9 months and 18 days in the penitentiary at Atlanta, Georgia. The appellant was again convicted of the same offense in 1941, and was then sentenced for a period of two years to the federal prison at Fort Leavenworth, Kansas, where he served 19 months and 18 days. It is significant to note that in his description

of these two convictions the relator described them to the presiding inspector conducting the hearing for deportation as being convictions for conspiracy to violate the liquor laws.

Proceedings for his deportation were commenced in 1941, when the relator was a prisoner in the penitentiary at Fort Leavenworth. The final hearing on this proceeding was held in Chicago September 14, 1943, and the warrant for his arrest and deportation was issued January 11, 1946, pursuant to the provisions of the Immigration Act of 1917, 8 U. S. C. A. §155(a). This section provides for the deportation of any alien who, subsequent to May 1, 1947, is sentenced more than once to imprisonment for one year or more because of conviction in this country of any crime *involving moral turpitude,* committed at any time after his entry.

By his petition for a writ of *habeas corpus* the relator sought to be discharged from the custody of the District Director of the United States Immigration and Naturalization Service under the writ of Deportation, on the ground that the crimes for which he was sentenced did not involve moral turpitude. This contention presents the only question involved in this appeal.

When Congress enacted this statute providing for deportation of aliens it is clear that the intent was not to provide that all aliens who were twice sentenced for more than one year for crime were to be deported. It was necessary that such sentences be for crimes involving moral turpitude. The only possible purpose Congress could have had in inserting the provision "involving moral turpitude" in this statute was to classify or describe those crimes the commission of which by an alien, if resulting in convictions and sentences, would furnish grounds for deportation.

We find many definitions of moral turpitude. Webster's New International Dictionary, Second Edition, defines turpitude as meaning: "Foul, base. Inherent baseness or vileness of principle, words or actions; depravity." The same dictionary defines moral turpitude as being: "The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory *mala prohibita.*" In Bouvier's Law Dictionary, Rawle's Third Revision, moral turpitude is defined as "as act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man." This Court in *Ng Sui Wing* v. *United States,* 7 Cir., 46 F. 2d 755, page 756, used this latter definition in defining the term. From all of these definitions we are given the same idea—that crimes described as involving moral turpitude are only those crimes which shock the public conscience, such as crimes of violence, or crimes revealing inherent baseness, vileness or depravity. We find evidence in the legislative history of the Act that Congress

intended this provision of the Act to apply only to such infamous crimes. In the hearing before the committee of Immigration and Naturalization of the House, held on March 11, 1916, Congressman Sabath said he believed "in giving a man a chance who, due to conditions, commits some offense which really was not the crime of a hardened criminal." Police Commissioner Woods of New York City suggested to the committee, "I would make provision to get rid of an alien in this country who comes here and commits felonies and burglaries, holds you up on the streets, and commits crimes against our daughters, because we do not want that kind of alien here, and they have no right to be here."

In Volume II of Administrative Decisions under Immigration and Nationality Laws of the United States, p. 141, we find an administrative interpretation by the Department then having the administration of the Act. In an opinion on a deportation proceeding decided by the Board June 26, 1944, and approved by the Attorney General July 12, 1944, the following statement from an opinion by the Solicitor of the Department of Labor was quoted with approval:

> "A crime involving moral turpitude may be either a felony or misdemeanor, existing at common law or created by statute, and is an act or omission which is *malum in se* and not merely *malum prohibitum;* which is actuated by malice or committed with knowledge and intention and not done innocently or without inadvertence or reflection; which is so far contrary to the moral law, as interpreted by the general moral sense of the community, that the offender is brought to public disgrace, is no longer generally respected, or is deprived of social recognition by good living persons; but which is not the outcome merely of natural passion, of animal spirits, of infirmity of temper, of weakness of character, of mistaken principles, *unaccompanied by a vicious motive or a corrupt mind.* (Italics supplied.)"

From the above definitions, legislative history and administrative interpretation, it seems perfectly obvious that Congress in describing crimes which would furnish a ground for the deportation of aliens had something more in mind that the mere violation of a statutory law. The limitation, "involving moral turpitude", must be taken as meaning that Congress intended to include in the classification only such infamous crimes as would grievously offend the moral code of mankind, such crimes as would have this effect even in the absence of any prohibitive statute.

As support for its contention that the crimes here in question involved moral turpitude, the government relies principally on three decisions: *Guarneri* v. *Kessler,* 5 Cir., 98 F. 2d 580; U. S. ex rel.

Berlandi v. *Reimer*, 2 Cir., 113 F. 2d 429; and *Maita* v. *Haff*, 9 Cir., 116 F. 2d 337.

In *Guarneri* v. *Kessler, supra*, the Court found that a conspiracy to smuggle alcohol, intended for beverage purposes, into the United States with intent to defraud the United States in violation of the Tariff Act of 1930, constituted a crime involving moral turpitude. The Court there defined moral turpitude very broadly as being, p. 581, "anything contrary to justice, honesty, principle or good morals." That definition would cover the violation of any criminal statute. The Court there pointed out, however, that:

> "Smuggling is a crime at common law. *Keck* v. *United States*, 172 U. S. 434, 19 S. Ct. 254. Fraud is an ingredient of the offense and the statutes providing for its punishment are not merely prohibitory. We have no hesitancy in holding that to clandestinely introduce goods into the United States with intent to defraud the revenue is dishonest and fraudulent and involves moral turpitude."

In pointing out that smuggling was a crime at common law the Court was apparently bolstering its holding that the crime there being considered involved moral turpitude. We think the common concept of those who engage in smuggling as a business is that they are dangerous criminals, criminals who would use any force or violence necessary to meet the dangers with which the business of smuggling is fraught.

In *U. S., ex rel. Berlandi* v. *Reimer, supra*, the Court held that the same crime which we are considering in the instant case did involve moral turpitude. There also the relator conspired to violate the internal revenue laws by depositing and concealing distilled spirits with intent to defraud the United States of the taxes imposed thereon. The Court said, page 430:

> "We think it cannot be said that one who conducts a business with intent to defraud the government of taxes * * * stands in a different position from that of a person who defrauds a private citizen of property. An intent to steal or defraud in the latter case has repeatedly been held to render an offense one which involves moral turpitude and for which an alien may be deported or excluded under the Immigration Laws."

The only other decision by a United States Court of Appeals holding that dealing with alcohol with intent to defraud the United States of the tax thereon constituted a crime involving moral turpitude is *Maita* v. *Haff*, 9 Cir., 116 F. 2d 337. In that decision the Court simply announced without discussion or the citation of authorities, p. 337, "This crime involves moral turpitude."

We find ourselves unable to agree with the holding in these two decisions.

In the case at bar the relator and others were twice apprehended operating an illicit still and distributing alcohol on which the tax had not been paid. In the *Berlandi* case the Court pointed out that before the repeal of the 18th Amendment prosecutions under the internal revenue statutes "were but alternatives for prosecutions under the Volstead Act," and convictions under the various statutes might have been treated alike so far as any question of moral turpitude was concerned. By that language the Court conceded that while prohibition was in effect a defendant on the same set of facts could have been either prosecuted under the Volstead Act or under the internal revenue laws, and that the violation of neither law would have been held to involve moral turpitude. The Court supported its holding in the *Berlandi* case that after repeal, a violation of the internal revenue laws by evading payment of the excise tax on liquor involved moral turpitude by arguing that prior to repeal the manufactuer and sale of liquor was unlawful; that paying tax thereon would not make it lawful; and that therefore there would be no specific intent to defraud the government, "but only a general purpose to disregard the prohibition laws." But, the Court said, p. 430,

> "Since the repeal, however, the situation would seem to be different for the business can now be lawfully conducted by the payment of internal revenue taxes, and the specific intent becomes one of enhancing profits by evading taxes, rather than of satisfying the demand for liquor which the Prohibition Act refused to sanction."

In other words, the Court would have us determine that there was or was not moral turpitude involved in a certain crime depending only upon the purpose which the perpetrator of the crime had in mind at the time the crime was committed. This would seem to be an untenable position.

The relator here would have been found guilty of the two crimes for which he was convicted and sentenced on proof of his having with others manufactured and sold the liquor without the payment of tax, whatever his specific purpose might have been. He would still have been found guilty if he had never heard of the requirement of payment of tax on the liquor involved. It is evident from his testimony before the Immigration Inspector that the relator thought he had been convicted of conspiracy to violate the liquor laws, not the internal revenue laws. The record indicates that he had been guilty of violating the liquor laws during prohibition. The courts almost uniformly held that such violations did not involve moral turpitude. *Bartos* v. *U. S. District Court*, 8 Cir., 19 F. 722; *Coy-*

kendall v. *Skrmetta*, 5 Cir., 22 F. 2d 120; *U. S. ex rel. Iorio* v. *Day*, 2 Cir., 34 F. 2d 920.

Judge Maris of the United States Court of Appeals for the Third Circuit, in *U. S. ex rel. Manzella* v. *Zimmerman*, D. C., E. D., Penn., 71 Supp. 534, held that breaking prison and escaping did not involve moral turpitude within the meaning of the Immigration Act. The indictment there alleged that the alien "did break prison and escaped with force of arms." The Court pointed out however, that in determining whether a certain crime involves moral turpitude we must consider "the inherent nature of the crime under any and all circumstances," and that "the proper test is to consider whether a prison breach accomplished by the least imaginable force * * * for example, by prying open the bars of a window or forcing the lock of a door," would constitute a crime involving moral turpitude. The Court concluded that in view of the fact that the crime of prison breach could be committed under such circumstances, "I cannot say that the action of an escaping prisoner involves that element of baseness, vileness or depravity which has been necessarily inherent in the concept of moral turpitude." If we apply this reasoning to the ground on which the Court based its opinion in the *Berlandi* case, it would seem that the crime there under consideration should not have been held to have involved moral turpitude.

But, if we adopt the reasoning of the Court in the *Berlandi* case and say that the purpose and specific intent of the relator there, after the repeal of Prohibition, was necessarily to evade taxes, rather than to satisfy the demand for liquor, we still are of the opinion that the crime should not be held to involve moral turpitude within the meaning of §155 of the Immigration Act. We agree with the thought expressed in the dissenting opinion of Judge Learned Hand in the *Berlandi* case, 113 F. 2d 429, 431, that the evasion of taxes should be commonly thought to be more morally shameful than it is but that many, many people who in private affairs are altogether right-minded seem to see nothing serious in evading taxes and this seems particularly true of excise taxes on liquor. Judge Hand also said in that dissent:

> "* * * and surely it is quite beyond measure to compare its disrepute with defrauding an individual. There is always the danger in construing this statute that we shall substitute logic for fact and deport a man for what people ought consistently to think of him, rather than for what they do; moreover, it is always embarrassing to appear to condone any deliberate violation of law. But, as we said in *United States ex rel. Iorio* v. *Day*, 2 Cir., 34 F. 2d 920, we must try to appraise the moral repugnance of the ordinary man towards the conduct

in question; not what an ideal citizen would feel. That decision, in my opinion, rules this situation and the order should be reversed."

In *United States* v. *Carrollo*, D. C., W. D. Mo., 30 F. Supp. 3, 7, the Court in discussing the proper interpretation of moral turpitude in a deportation case said:

"We are not prepared to rule that an attempt to evade the payment of a tax due the nation, or the commonwealth, or the city, or the school district, wrong as it is, unlawful as it is, immoral as it is, is an act evidencing baseness, vileness or depravity of moral character. The number of men who have at some time sought to evade the payment of a tax or some part of a tax to some taxing authority is legion. Any man who does that should be punished civilly or by criminal sentence, but to say that he is base or vile or depraved is to misuse words."

While this statement on evasion of tax was not necessary to that decision, we consider it a correct statement.

A statute authorizing deportation should be most strictly construed. In *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, page 10, the Supreme Court in construing another portion of the same section of the Act with which we are here concerned said:

"We resolve the doubts in favor of that construction (a liberal construction) because deportation is a drastic measure and at times the equivalent of banishment or exile, *Delgadillo* v. *Carmichael*, 332 U. S. 388. It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."

If we follow this rule of construction we must hold that crimes involving moral turpitude, as those words are used in §155 of the Immigration Act, were intended to include only crimes of violence, or crimes which are commonly thought of as involving baseness, vileness or depravity. Such a classification does not include the crime of evading the payment of tax on liquor, nor of conspiring to evade that tax.

The judgment of the District Court is reversed and the cause remanded with instructions to enter an order discharging the relator.

A True Copy:

Teste:

——— ———,

Clerk of the United States Court of Appeals for the Seventh Circuit.

And on the same day, to-wit, on the tenth day of July, 1950, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Monday, July 10, 1950

Before Hon. J. EARL MAJOR, Chief Judge; Hon. WALTER C. LINDLEY, Circuit Judge, Hon. H. NATHAN SWAIM, Circuit Judge

No. 10016

UNITED STATES OF AMERICA, EX REL. SAM DE GEORGE, RELATOR-APPELLANT,

vs.

ANDREW JORDAN, DISTRICT DIRECTOR OF THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, CHICAGO, ILLINOIS, RESPONDENT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed, and that this cause be, and the same is hereby, remanded to the said District Court with instructions to enter an order discharging the relator.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

I, KENNETH J. CARRICK, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the opinion of the Court, filed July 10, 1950, and the judgment of the Court, entered July 10, 1950, in Cause No. 10016, U. S. A. ex rel. Sam De George vs. Andrew Jordan, District Director, etc., as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this ninth day of September A. D. 1950.

KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit,
By R. HAYES BLANCHARD,
Chief Deputy Clerk.

[SEAL.]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1950 955792 140

Supreme Court of the United States

No. 348, October Term, 1950

Order allowing certiorari

Filed November 27, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

923106—51

U. S. GOVERNMENT PRINTING OFFICE: 1951

No. 348

In the Supreme Court of the United States

OCTOBER TERM, 1950

ANDREW JORDAN, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, PETITIONER

v.

SAM DE GEORGE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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No. 348

ANDREW JORDAN, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, PETITIONER

v.

SAM DE GEORGE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit (R. 55) which reversed an order of the United States District Court for the Northern District of Illinois dismissing respondent's petition for a writ of habeas corpus and remanded the cause with directions to enter an order discharging him from custody.

OPINION BELOW

The opinion of the Court of Appeals (R. 48-55) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 10, 1950 (R. 55). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether conspiracy to violate the internal revenue laws of the United States with intent to defraud the United States of taxes on distilled spirits is a crime involving moral turpitude within the meaning of Section 19(a) of the Immigration Act of 1917.

STATUTE INVOLVED

Section 19(a) of the Immigration Act of February 5, 1917, 39 Stat. 889, as amended, 8 U.S.C. 155(a), provides in pertinent part:

> * * * except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported * * *.

STATEMENT

Respondent, a native and citizen of Italy, was taken into custody in February or March, 1949 (see R. 2, 9), under a deportation warrant issued

on January 11, 1946 (R. 41).[1] The order of deportation recited that he was subject to deportation under the provisions of Section 19(a) of the Immigration Act of 1917, in that, subsequent to May 1, 1917, he had been sentenced to imprisonment more than once for a term of one year or more for the commission, subsequent to entry, of crimes involving moral turpitude, to wit, conspiracy to violate the internal revenue laws. The deportation order was based on two convictions. In May 1938, respondent was convicted in the United States District Court for the Southern District of Ohio on his plea of guilty and sentenced to imprisonment for one year and a day (R. 26-27) under an indictment charging him and others with conspiracy to violate 12 sections of the internal revenue laws (R. 27-31). Three of the objective offenses charged in the indictment involved the element of fraud on the United States, as follows (R. 28-29):

> to carry on the business of distillers and to defraud the United States of the tax on the liquors distilled by them [R.S. 3257];
>
> * * * * *
>
> to possess spirituous liquors, to wit, whiskey and alcohol, with intent to sell it in fraud of law and evade the tax thereon [R.S. 3452]; to remove and conceal distilled spirits, to wit, whiskey and alcohol, with intent to defraud the United States of the tax thereon [R.S. 3450].

[1] His deportation had meanwhile been stayed at his request (R. 8-9).

In June 1941 respondent was convicted in the United States District Court for the Northern District of Indiana and sentenced to two years' imprisonment (R. 38) under an indictment for conspiracy to commit various offenses against the internal revenue laws (R. 32-37), including defrauding the United States of taxes on distilled spirits [2] (R. 33).

On March 8, 1949, respondent filed a petition for a writ of habeas corpus in the District Court for the Northern District of Illinois challenging the validity of the deportation order on the ground that the crimes of which he had been convicted "did not involve moral turpitude" and were therefore "insufficient in law and in fact to justify" his deportation (R. 2-3). Petitioner filed a return (R. 5-9) to which he attached the record of the hearing accorded respondent in the deportation proceeding (R. 11-23) and copies of the indictments and convictions referred to above (R. 26-38), which respondent had identified at the administrative hearing as relating to him (R. 6-7, 18-20). After a hearing, the District Court dismissed the petition and remanded respondent to petitioner's custody (R. 42).

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[2] 26 U.S.C. 2806(f): "Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or any part thereof, he— * * * (2) Shall be fined not less than $500 nor more than $5,000, and be imprisoned not less than six months nor more than three years."

The Court of Appeals reversed the order of the District Court and remanded the cause with directions to enter an order discharging respondent (R. 55). The court below thought that "crimes involving moral turpitude, as those words are used in [§ 19(a) of the Immigration Act of 1917]; were intended to include only crimes of violence, or crimes which are commonly thought of as involving baseness, vileness or depravity. Such a classification does not include the crime of evading the payment of tax on liquor, nor of conspiring to evade that tax" (R. 54).

REASONS FOR GRANTING THE WRIT

The decision below is erroneous and is, as the court frankly acknowledged (R. 51-52), in direct conflict with the decisions of the Second and Ninth Circuits in *United States ex rel. Berlandi* v. *Reimer*, 113 F. 2d 429, and *Maita* v. *Haff*, 116 F. 2d 337, holding that offenses against the internal revenue liquor laws involving intent to defraud the United States of taxes are crimes involving moral turpitude within the meaning of Section 19(a) of the Immigration Act of 1917. Nor can the decision here be reconciled with the Fifth Circuit's holding in *Guarneri* v. *Kessler*, 98 F. 2d 580, certiorari denied, 305 U. S. 648, that smuggling with intent to defraud the revenue, in violation of the tariff laws (19 U.S.C. 1593), "is dishonest and fraudulent and involves moral turpitude" (p. 581) and therefore subjects the alien offender to deportation.

The *Berlandi* and *Guarneri* decisions point up what we think is the error in the decision below.[3] In its opinion the court below repeatedly referred to respondent's crimes as involving merely evasion of taxes (R. 53, 54), and it thought that Congress did not intend to include such offenses within the classification of crimes involving moral turpitude. The court failed to accord to the element of fraud its proper significance in determining the character of the crimes.[4] But as the Fifth Circuit said in the similar *Guarneri* case, "Fraud is an ingredient of the offense" (98 F. 2d at 581). And we think it is undeniably true, as the Second Circuit said in the *Berlandi* case, that "Fraud has ordinarily been the test whether crimes not of the gravest character involved moral turpitude in the sense of the statute" (113 F. 2d at 431). Fraud is a badge of moral turpitude. Criminal frauds involving private property have uniformly been held to be crimes involving moral turpitude within the meaning of the immigration laws.[5] "We think it cannot be said that one who conducts a business [in illicit distilled spirits] with intent to defraud the

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[3] In the *Maita* case, *supra*, the Ninth Circuit said categorically, without discussion, that "This crime involves moral turpitude."

[4] The same criticism is applicable to the dissenting opinion of L. Hand, J., in the *Berlandi* case, 113 F. 2d at 431, which the court below cited in support of its decision (R. 53-54).

[5] *Bermann* v. *Reimer*, 123 F. 2d 331 (C.A. 2) (obtaining property under false pretenses); *Mercer* v. *Lence*, 96 F. 2d 122, 124 (C.A. 10) (defrauding by deceit and falsehood); *U. S. ex rel. Robinson* v. *Day*, 51 F. 2d 1022 (C.A. 2) (forgery); *U. S. ex rel. Medich* v. *Burmaster*, 24 F. 2d 57, 58 (C.A. 8)

government of taxes and who probably could not conduct it at a profit if he paid the taxes stands in a different position from that of a person who defrauds a private citizen of property." *Berlandi* v. *Reimer, supra,* at 430-431.

The fact, if it be a fact, that respondent "thought he had been convicted of conspiracy to violate the liquor laws, not the internal revenue laws," and the fact that violations of the Volstead Act during the prohibition era were not regarded as involving moral turpitude, to which the court below adverted (R. 52-53), do not derogate from the reasoned authority of the *Berlandi* and *Guarneri* decisions. For moral turpitude *vel non* attaches to the crime itself as defined by law and particularized in the indictment. The court may not look behind the record of conviction to ascertain whether the alien was blameless or whether the circumstances under which he committed the crime were such as to absolve him of immorality; its function is limited to an examination of the elements of the crime itself to determine whether it is one involving moral turpitude.[6] And as we have shown, intent to defraud or defrauding the United States, which, we

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(withholding and concealing assets in bankruptcy); *U. S. ex rel. Millard* v. *Tuttle*, 46 F. 2d 342, 345 (E.D. La.) (encumbering mortgaged property with intent to defraud); *Ponzi* v. *Ward*, 7 F. Supp. 736, 738 (D. Mass.) (using the mails in a scheme to defraud).

[6] *U. S. ex rel. Zaffarano* v. *Corsi*, 63 F. 2d 757 (C.A. 2); *U. S. ex rel. Meyer* v. *Day*, 54 F. 2d 336, 337 (C.A. 2); *U. S. ex rel. Robinson* v. *Day*, 51 F. 2d 1022 (C.A. 2); *U. S. ex rel. Mylius* v. *Uhl*, 210 Fed. 860, 863 (C.A. 2).

submit, do manifest moral turpitude, are specific elements of one, at least, of the objective crimes involved in each of the conspiracies of which respondent was convicted.[7]

The case presents an important question in the administration of provisions of our laws governing the deportation and exclusion[8] of aliens. The conflict created by the decision below as to the proper meaning and application of the phrase "crime involving moral turpitude" can only be resolved by this Court. Cf. *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 8.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1950.

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[7] Neither do the statements from the legislative history cited by the court below (R. 49-50) support its decision. Apart from the fact that such expressions of witnesses at committee hearings are often of dubious value in determining the Congressional purpose (cf. *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125), the expressions here cited shed little light on the meaning of the words "moral turpitude".

[8] 8 U.S.C. 136(e) requires the exclusion of "Persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude * * *."

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No. 348

In the Supreme Court of the United States

OCTOBER TERM, 1950

ANDREW JORDAN, District Director of Immigration and Naturalization, Petitioner

v.

SAM DE GEORGE

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Court of Appeals (R. 48-55) is reported at 183 F. 2d 768. The District Court wrote no opinion (R. 42).

JURISDICTION

The judgment of the Court of Appeals was entered on July 10, 1950 (R. 55). The petition for

a writ of certiorari was filed October 6, 1950, and was granted November 27, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether conspiracy to defraud the United States of taxes on distilled spirits is a crime involving moral turpitude within the meaning of Section 19(a) of the Immigration Act of 1917.

STATUTE INVOLVED

Section 19(a) of the Immigration Act of February 5, 1917, 39 Stat. 889, as amended, 8 U.S.C. 155 (a), provides:

> * * * except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * *.

STATEMENT

This was a habeas corpus proceeding challenging the legal sufficiency of a deportation order. Respondent, a native and citizen of Italy, entered the

United States in 1921, when he was seventeen years of age (R. 17). He has continued to live in this country since then. During his period of residence in the United States he has been convicted four times. The first was in 1924, when he was convicted for transporting liquor and sentenced to a term in the reformatory (R. 18). The second was in 1931 when he was fined $30 for transferring license plates (R. 18). The deportation charges in the instant case are not predicated upon these two offenses, but rest entirely upon two subsequent convictions, in 1938 and in 1941.

In May, 1937, respondent was indicted under Title 18 U.S.C. 88,[1] for conspiracy, in concert with seven other defendants, to violate twelve sections of the Internal Revenue Code (R. 27-31). Three of the acts recited in the indictment specifically involved the element of fraud on the United States, as follows (R. 28-29):

> to carry on the business of distillers and to defraud the United States of the tax on the liquors distilled by them;
>
> * * * * * * * * *
>
> to possess spirituous liquors, to wit, whiskey and alcohol; with intent to sell it in fraud of law and evade the tax thereon;
>
> to remove and conceal distilled spirits, to wit, whiskey and alcohol, with intent to defraud the United States of the tax thereon.[2]

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[1] Now 18 U.S.C. 371.

[2] The quoted charges were supported by 26 U.S.C. (1934 Ed.) 1155(f), 1440 and 1441, which were among the twelve statutory sections mentioned in the indictment.

On May 27, 1938, respondent pleaded guilty to the offenses charged in the indictment and was sentenced to imprisonment for a term of one year and one day (R. 26-27).

After serving his sentence respondent resumed his unlawful activities and in December, 1939 he was again indicted for conspiracy, this time in combination with eight other defendants, to violate the internal revenue laws of the United States (R. 32-37). Again the indictment charged, among other offenses, that the defendants did conspire to "unlawfully, knowingly, and wilfully defraud the United States of tax on distilled spirits" (R. 33).[3] After trial, respondent was found guilty and sentenced on June 6, 1941, to imprisonment for a period of two years (R. 38).

While imprisoned on this second conviction, respondent was served with a warrant of arrest in deportation proceedings, asserting that he appeared to be subject to deportation because of two sentences of one year or more for the commission subsequent to entry of crimes involving moral turpitude (R. 10-11). After continued hearings on this charge, at which respondent was represented by counsel (R. 11-23), and after consideration of the case by the Commissioner of Immigration and Naturalization and the Board of Immigration Appeals, respondent was ordered deported and a

[3] Although this indictment did not refer to any specific section of the Internal Revenue Code, the quoted charge apparently rested on 26 U.S.C. (1940 Ed.) 2806(f).

warrant for his deportation was issued January 11, 1946, on the ground that he had been sentenced to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude (R. 41). At respondent's request, his deportation was deferred from time to time until early in 1949, when petitioner moved to execute the warrant of deportation (R. 8-9).

On March 8, 1949, respondent filed a petition for a writ of habeas corpus in the District court for the Northern District of Illinois challenging the validity of the deportation order on the ground that the crimes of which he had been convicted "did not involve moral turpitude" and were therefore "insufficient in law and in fact to justify" his deportation (R. 2-3). Petitioner filed a return (R. 5-9) to which he attached the record of the hearing accorded respondent in the deportation proceedings (R. 11-23) and copies of the indictments and convictions referred to above (R. 26-38), which respondent had identified at the administrative hearing as relating to him (R. 6-7, 18-20). After a hearing, the District Court dismissed the petition and directed that respondent be returned to petitioner's custody (R. 42).

The United States Court of Appeals for the Seventh Circuit reversed the order of the District Court and remanded the cause with directions to enter an order discharging respondent (R. 55). That court thought that "crimes involving moral

turpitude, as those words are used in [§19(a) of the Immigration Act of 1917], were intended to include only crimes of violence, or crimes which are commonly thought of as involving baseness, vileness or depravity. Such a classification does not include the crime of evading the payment of tax on liquor, nor of conspiring to evade that tax" (R. 54).

SUMMARY OF ARGUMENT

In providing for the deportation of aliens who have been convicted of two crimes involving "moral turpitude" the immigration statute has used a term that is not clearly defined. The legislative history demonstrates, however, that Congress sought to reach the confirmed criminal, whose criminality had been revealed in two serious penal offenses.

In the context of the deportation statute the character of the alien is not directly in issue; the question is whether the crimes of which he has been convicted involve moral turpitude. Therefore it is the nature of the crime, not the circumstances surrounding its commission, that must be examined.

The various definitions of moral turpitude provide no exact test by which we can classify the specific offenses here involved. Essentially, they must be measured against the moral standards that prevail in contemporary society to determine whether the violations are generally considered essentially immoral.

Violators of the alcohol tax laws are the direct offspring of the gangsters of the prohibition era who were engaged in organized lawlessness, thriving on violence and corruption. They make a business of crime rather than accidentally or occasionally falling on the wrong side of the law.

Basically, the crimes for which the respondent was convicted constitute frauds against the United States. Criminal violations involving fraud have always been found to involve moral turpitude. By any rational standard this must be so, whether the fraud be against individuals or against the Government.

The decision below is directly opposed to *United States ex rel. Berlandi* v. *Reimer*, 113 F. 2d 429 (C.A. 2); *Maita* v. *Haff*, 116 F. 2d 337 (C.A. 9); and *Guarneri* v. *Kessler*, 98 F. 2d 580 (C.A. 5), certiorari denied, 305 U.S. 648.

ARGUMENT

Confronting the Court in this case is a question of statutory construction. Respondent, concededly an alien, was convicted in the United States for two criminal offenses—each of which consisted of conspiracy to defraud the United States of revenue. The second conviction was for an independent infraction which was committed after completion of his sentence for the first crime. See *Fong Haw Tan* v. *Phelan*, 333 U.S. 6. The only issue is whether the criminal violations involved moral turpitude.

If the answer is affirmative, then the deportation order is legally unassailable.

I

The History of the Statute Indicates That Congress Sought to Reach the Confirmed Criminal Who Had Committed Two Serious Crimes.

The designation of crimes involving moral turpitude has been a feature of our immigration laws almost from the inception of federal regulation. The present statute refers to crimes involving moral turpitude in four different connections.[4] While some criticisms have been leveled at the ambiguity of this term, Congress evidently has deemed it a satisfactory formula for the expression of its objectives.[5]

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[4] Sec. 3, Immigration Act of 1917, 8 U.S.C. 136(e), exclusion of persons "who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude"; three clauses of Sec. 19(a), Immigration Act of 1917, as amended, 8 U.S.C. 155(a), first, deportation for conviction and sentence for "a crime involving moral turpitude, committed within five years after the entry of the alien into the United States"; second, the statutory provision considered in the instant case, providing for deportation of aliens who have been convicted and sentenced for two crimes involving moral turpitude; and third, deportation for a crime involving moral turpitude prior to entry.

[5] The designation of crimes involving moral turpitude is continued in the currently pending omnibus bill to recodify the immigration and nationality laws, introduced by the Chairman of the Senate Judiciary Committee, Sec. 241(a), S. 716, 82nd Cong., 1st Sess. See also S. Rept. 1515, 81st Cong., 2d Sess., pp. 390-392.

In attempting to fathom the legislative purpose we turn first to an exploration of the legislative development.

Public concern over the influx and continued stay of alien criminals is as old as our Nation. From time to time in the national history, sharp clamor was provoked by the practices of some European governments in exporting convicts to the United States. Garis, *Immigration Restriction,* pp. 12, 18, 36-44, 51-57, 94. Eventually these protests culminated in the Act of March 3, 1875, 18 Stat. 477, which forbade the entry into the United States of convicts, except those whose convictions had resulted from political offenses. This prohibition was incorporated in 1882 in the first general federal enactment regarding immigration. Secs. 2 and 4, Act of August 3, 1882, 24 Stat. 214.

The first reference to moral turpitude appeared in the Act of March 3, 1891, 26 Stat. 1084, which directed the exclusion of "persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude". Political offenses again were expressly excepted, as they have been in every similar enactment.[6] The legislative proceedings contemporaneous with the adoption of the 1891 statute furnish scant guidance in evaluating this term. Evidently the sponsors

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[6] Sec. 11 of this statute provided for the first time that any alien who entered in violation of law could be deported within one year after his arrival. Later enactments gradually expanded this period of limitation to its present 5-year span.

of the measure believed they were introducing into the statutory pattern a designation which was generally understood and which did not accomplish any significant change.[7] The explanatory committee report merely stated that the bill barred "persons who have been convicted of felony or other infamous crimes." H. Rep. 3808, 51st Cong. 2d Sess., p. 2.[8] Similar language was retained, without further explanation, in the statutes of 1903 and 1907. Sec. 2, Act of March 3, 1903, 32 Stat. 1213; Sec. 2, Act of Feb. 20, 1907, 34 Stat. 898.

Continued dissatisfaction with the operation of the statutes barring criminal aliens led to the studies of the Immigration Commission. The final report of that group declared, 1 *Reports of the Immigration Commission* (1910), 27, that:

> The present immigration law is not adequate to prevent the immigration of criminals, nor is it sufficiently effective as regards the deportation of alien criminals who are in this country.

The Commission recommended that deportation be prescribed for aliens who became criminals within a reasonably short time after their arrival, but

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[7] The report of the Select Committee on Immigration and Naturalization (H. Rep. 3807, 51st Cong. 2d Sess.) which preceded this measure did not mention the introduction of the term moral turpitude as one of the most important proposed amendments.

[8] See also 22 Cong. Rec. 2950, which indicates that the Committee was thinking of infamous crimes.

urged that such deportation should not be incurred for "minor offenses". *Id.*, p. 34.[9]

The Immigration Act of 1917, which evolved largely out of the recommendation of the Immigration Commission, for the first time required the deportation of aliens involved in criminal activities within the United States. In their earlier stages the legislative proposals provided only for deportation upon conviction and sentence for crimes committed within five years after entry. 53 Cong. Rec. 4864. The provisions dealing with repeaters were introduced as an amendment on the floor of the House by Representative Sabath, on behalf of the House Committee. In explanation, Representative Sabath stated, 53 Cong. Rec. 5167:

> I am offering this amendment to demonstrate that I have no desire to protect a real criminal, a man who is a criminal at heart, a man who is guilty of a second offense involving moral turpitude and for the second time is convicted. A man of that kind is a criminal and is not entitled to consideration on the part of any of the citizens of the United States.

The sentiments were endorsed by Representative Burnett, sponsor of the bill and Chairman of the

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[9] In its classification of crimes the Commission listed gainful offenses, which "consist of blackmail and extortion, burglary, forgery and *fraud*, larceny and receiving stolen property, and robbery. All of these are predatory offenses, committed for purposes of gain." 36 Reports of the Immigration Commission (1910) 11. (Italics supplied.)

Committee, in agreeing to the amendment, 53 Cong. Rec. 5168:

> The police commissioner of New York was before the Committee, and he showed an alarming condition in the prisons in regard to aliens who commit crimes after they come here, and he insisted that there should be no time limit as to the deportation of any of them this side of final citizenship. * * * every member of the committee believe that it would be a harsh rule * * *.
>
> But the suggestion was then made by the gentleman from Illinois [Mr. Sabath] that those who committed a second crime involving moral turpitude showed then a criminal heart and a criminal tendency, and they should then be deported; and the committee unanimously agreed with the gentleman that that ought to be done.

While these utterances are couched in somewhat general language, they do demonstrate, we believe, that this statute was aimed at a person who had committed serious crimes, a confirmed criminal, a repeater. See also *Fong Haw Tan* v. *Phelan*, 333 U. S. 6; S. Rep. 352, 64th Cong., 1st Sess., p. 15.

We cannot agree with the court below (R. 49-50) that the legislative history indicates that Congress was thinking only of violent crimes and related offenses. The off-hand views expressed by ordinary witnesses at committee hearings hardly are a reliable index of the Congressional purpose. Cf.

United States v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125. Moreover, the statement of the Committee Chairman, Representative Burnett, which we have just quoted, indicates quite decisively that the Committee and the Congress did not fully subscribe to the views of Police Commissioner Woods. Consequently, the indecisive materials relied on by the Court below hardly can chart a true course for applying the statute.

II

The Phrase "Crime Involving Moral Turpitude" Has Generally Been Interpreted to Mean Offenses which Contemporary Society Considers Essentially Immoral.

In prescribing for criminal misconduct involving moral turpitude, Congress was employing a generalized term. Similar generalizations are not uncommon in the immigration and nationality laws of the United States.[10] In utilizing them, Congress doubtless "intended an elastic test, one which should not be circumscribed by attempts at precise definition." *Schneiderman* v. *United States*, 320 U. S. 118, 139.

In referring to criminal offenses involving moral turpitude Congress was invoking a descriptive

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[10] E.g., "likely to become a public charge", *Mahler* v. *Eby*, 264 U.S. 32; "good moral character", *Petitions of Rudder*, 159 F. 2d 695 (C.A. 2); "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the" United States, *Schneiderman* v. *United States*, 320 U.S. 118.

term [11] which had long been familiar in Anglo-American law.[12] Common usages, in addition to that in the immigration statutes, have occurred in legislation dealing with the disbarment of attorneys [13], the revocation of medical licenses [14], the disqualification or impeachment of witnesses [15], contribution between joint tort feasors [16], and slander.[17]. Of the many definitions that have been attempted, the most popular probably has been that of Bouvier, accepted by the court below (R. 49). See also *Ng Sui Wing* v. *United States*, 46 F. 2d 755 (C.A. 7). A definition of moral turpitude that

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[11] Related appellations, bearing somewhat similar meanings, are "infamous crimes", "*crimen falsi*", "*malum in se*", and "felonies". See 1 Burdick, *Law of Crimes*, 87-89; Clark and Marshall, *Crimes* (4th Ed.) 12. Of these the term "felony" is the most precise, since it is commonly measured by the severity of the punishment.

[12] See *Burdick, op. cit.*, supra; 58 C.J.S. 1200; note, 43 Harv. L.R. 117; *United States ex rel. Manzella* v. *Zimmerman*, 71 F. Supp. 534, 537 (E.D. Pa.).

[13] *In re McAllister*, 14 Cal. 2d 602, 95 P. 2d 932; *Bartos* v. *United States District Court*, 19 F. 2d 722 (C.A. 8); 7 C.J.S. 736; Bradway, *Moral Turpitude As the Criterion of Offenses That Justify Disbarment*, 24 Cal. L.R. 9-27.

[14] *White* v. *Andrew*, 70 Colo. 50; 48 C.J. 1099.

[15] 3 Wharton, *Criminal Evidence* (11th Ed.) 2005, 2261; 3 Wigmore, *Evidence* (3rd Ed.) 540; 3 Jones, *Evidence* (4th Ed.) 1286.

[16] *Fidelity & Cas. Co.* v. *Christenson*, 183 Minn. 182; 18 C.J.S. 16.

[17] *Sipp* v. *Coleman*, 179 Fed. 997 (C.C.D. N.J.).

is perhaps more comprehensive may be found in Black's *Law Dictionary* (3rd Ed.), at pp. 1765-1766:

> A term of frequent occurrence in statutes, especially those providing that a witness' conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general, it means neither more nor less than "turpitude", *i.e.,* anything done contrary to justice, honesty, modesty, or good morals. * * * It is also commonly defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man. * * * Although a vague term, it implies something immoral in itself, regardless of its being punishable by law; * * * thus excluding unintentional wrong, or an improper act done without unlawful or improper inten[t] * * *. It is also said to be restricted to the gravest offenses, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind.

But no definition is entirely satisfactory in attempting to measure the moral impact of criminal misconduct. Congress manifestly intended the test to reflect the "generally accepted moral conventions current at the time, so far as we could ascertain them." *United States* v. *Francioso,* 164

F. 2d 163 (C.A. 2). As used in the Immigration Acts the term "moral turpitude" doubtless "refers, not to legal standards, but rather to those changing moral standards of conduct which society has set up for itself through the centuries." *United States ex rel. Manzella* v. *Zimmerman,* 71 F. Supp. 534, 537 (E.D. Pa.). See also *United States ex rel. Iorio* v. *Day,* 34 F. 2d 920, 921 (C.A. 2); *Repouille* v. *United States,* 165 F. 2d 152 (C.A. 2); *Sipp* v. *Coleman,* 179 Fed. 997 (C.C.D. N.J.).

In evaluating the degree of moral offensiveness a number of subsidiary considerations should be taken into account. In the first place, the convictions here were for conspiracy. However, it seems evident enough that if moral turpitude was implicit in the susbtantive crimes, the same consequence would attach to convictions for conspiracy in committing those crimes. *In re McAllister,* 14 Cal. 2d 602, 95 P. 2d 932; cf. *United States ex rel. Meyer* v. *Day,* 54 F. 2d 336 (C.A. 2). Moreover, it is generally recognized that it is the crime itself which must involve moral turpitude and circumstances exacerbating or mitigating the defendant's conduct in the particular care are not relevant. *United States ex rel. Mylius* v. *Uhl,* 210 Fed. 860 (C.A. 2). In determining the moral culpability of the offense the court therefore can look only to its inherent nature, as defined in the penal statute and in the record of conviction. *United States ex*

rel. Zaffarano v. *Corsi*, 63 F.2d 757, 758 (C.A. 2); *Ng Sui Wing* v. *United States*, 46 F.2d 765 (C.A. 7); *United States ex rel. Robinson* v. *Day*, 51 F. 2d 1022 (C.A. 2). In the light of this concept it is difficult to understand the significance of the observation of the court below (R. 52, 48-49) that "relator thought he had been convicted of conspiracy to violate the liquor laws, not the internal revenue laws."[18] The impact of the respondent's conduct must be gauged in the light of legal requirements, and not his subjective understanding. Cf. *Savorgnan* v. *United States*, 338 U. S. 491, 500. Thus, a defendant's later protestation that he was not animated by fraudulent intent cannot be permitted to override the record of conviction, which is the only measure of his turpitude. *United States ex rel. Millard* v. *Tuttle*, 46 F. 2d 342 (E.D. La.).

III

Conspiracy to Defraud the United States of Taxes on Distilled Liquor is a Crime Involving Moral Turpitude.

It is essential, we believe, to keep clearly in mind the limited issue, and the only issue, that must be resolved in this case. The question for decision is not, as the court mistakingly supposed, whether a liquor law violation as such is morally indefen-

[18] It is difficult also to find any relevance in the letter from a real estate man, in the face of the record of criminality, asserting that respondent always had been a good citizen (R. 48).

sible.[19] On that issue the cases are in conflict.[20] Moreover, the cases which have found moral turpitude absent in such violations have generally involved isolated offenses and not organized criminality. *Bartos* v. *United States District Court*, 19 F. 2d 722 (C.A. 8); cf. *Rousseau* v. *Weedin*, 284 Fed. 565 (C.A. 9).

The respondent's offenses transgress beyond the domain of violation of a regulatory statute. For he was found guilty of conspiracies to defraud the United States of revenue. The crucial feature of this case, in our view, is the charge of fraud against the United States.[21] Fraud is one of the clearest indications of moral turpitude and, in fact, the presence of fraud has been used by the courts as

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[19] The respondent had been convicted of conspiracies to violate provisions of the Internal Revenue Law not of the Federal Alcohol Administration Act (49 Stat. 977, 27 U.S.C. 201-212). It is the latter law which is the successor to the National Prohibition Law and which is a regulatory statute, not a revenue law.

[20] *Pro: Riley* v. *Howes*, 17 F. 2d 647 (D. Me.), reversed on other grounds, 24 F. 2d 686 (C.A. 1); *Rudolph* v. *United States*, 6 F. 2d 487 (C.A.D.C.) certiorari denied, 269 U.S. 559. *Contra: United States ex rel. Iorio* v. *Day*, 34 F. 2d 920 (C.A. 2); *Coykendall* v. *Skrmetta*, 22 F. 2d 120 (C.A. 5); *Bartos* v. *United States District Court*, 19 F. 2d 722 (C.A. 8). *Matter of J* , 2 I. & N. Dec. 99. See also authorities collected in note, 75 U. of Pa. L. R. 357 (1927); note, 43 Harv. L. R. 117; 58 C.J.S. 1205.

[21] The court below stated that, "He would still have been found guilty if he had never heard of the requirement of payment of tax on the liquor involved" (R. 52). This appears inconsistent with the fact that the charges against him in both cases included specific allegations of an intent to defraud (R. 28-29, 33).

a test in applying the deportation laws.[22] Fraud against the Government is not less reprehensible than fraud in business relationships. See *United States ex rel. Popoff* v. *Reimer*, 79 F. 2d 513, 515 (C.A. 2); *United States* v. *Gottfried*, 165 F. 2d 360, 368 (C.A. 2). Without deciding the issue, this Court intimated as much in *Fiswick* v. *United States*, 329 U. S. 211, 221. In fact, since in a democracy a fraud against the Government is the equivalent of a fraud against one's fellow citizens, a contrary view would be incomprehensible.

This Court has sanctioned extraordinary remedies to defeat and discourage frauds against the United States. Citizenship rights (*Knauer* v.

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[22] *Ponzi* v. *Ward*, 7 F. Supp. 736 (D. Mass.) (use of mails to defraud—"Crimes involving a fraud are crimes which the courts have looked upon as involving moral turpitude within the meaning of the statute."); *Mercer* v. *Lence*, 96 F. 2d 122 (C.A. 10) certiorari denied, 305 U.S. 611 (conspiracy to defraud by deceit and falsehood); *United States ex rel. Medick* v. *Burmaster*, 24 F. 2d 57 (C.A. 8) (concealing assets in bankruptcy); *Nishimoto* v. *Nagle*, 44 F. 2d 304 (C.A. 9), and *United States ex rel. Portada* v. *Day*, 16 F. 2d 328 (S.D. N.Y.) (issuing checks with intent to defraud); *United States ex rel. Millard* v. *Tuttle*, 46 F. 2d 342 (E.D. La.) (execution of chattel mortgage with intent to defraud—"conviction of an offense with intention to defraud * * * on its face I think implies moral turpitude. * * I think it hardly necessary to cite authority to support the proposition that the commission of a fraud involved moral turpitude."); *Bermann* v. *Reimer*, 123 F. 2d 331 (C.A. 2) (obtaining goods under false pretenses); *United States ex rel. Robinson* v. *Day*, 51 F. 2d 1022 (C.A. 2) (forgery—"Forgery * * * involves an intent to defraud, and thus is a crime of moral turpitude."); *United States ex rel. Popoff* v. *Reimer*, 79 F. 2d 513-515 (fraud in naturalization proceeding).

United States, 328 U.S. 654), patents (*United States* v. *Bell Telephone Co.*, 128 U.S. 315), and land grants (*United States* v. *Throckmorton*, 98 U.S. 61), obtained through fraud have been revoked. And judgments induced by deception of the court have been vacated despite the lapse of many years. *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, 322 U.S. 238.

The court below apparently felt that the insignia of moral turpitude is reserved only for crimes of violence or depravity (R. 49). Yet the predatory crimes also have generally been regarded as turpitudinous, whether they have involved violence or not. Thus, moral turpitude is implicit in larceny, whether it be grand or petit. *United States ex rel. Meyer* v. *Day*, 54 F. 2d 336 (C.A. 2); *Tillinghast* v. *Edmead*, 31 F. 2d 81 (C.A. 1). And there is universal agreement, too, that many criminal impairments of the authority of government, such as perjury,[23] counterfeiting,[24] and smuggling,[25] likewise necessarily involve moral turpitude.

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[23] *United States ex rel. Boraca* v. *Schlotfeldt*, 109 F. 2d [illegible] (C.A. 7); *Kaneda* v. *United States*, 278 Fed. 694 (C.A. 9), certiorari denied, 259 U.S. 583; *United States ex rel. Karpay* v. *Uhl*, 70 F. 2d 792 (C.A. 2); *United States ex rel. Majka* v. *Palmer*, 67 F. 2d 146 (C.A. 7); *Ono* v. *Carr*, 56 F. 2d 772 (C.A. 9).

[24] *United States ex rel. Volpe* v. *Smith*, 289 U.S. 422, 423; *United States ex rel. Schlimmgen* v. *Jordan*, 164 F. 2d 633 (C.A. 7).

[25] *Guarneri* v. *Kessler*, 98 F. 2d 580 (C.A. 5), certiorari denied, 305 U.S. 648.

The court below relied upon two judicial pronouncements which state that the evasion of taxes is not generally viewed as morally shameful by a large segment of our population.[26] The fine line drawn between tax avoidance and tax evasions provides some basis for this view in the area where the violation involves accounting or the application of the statutes or regulations. It is not generally regarded as morally reprehensible to resolve all questions of interpretation in favor of one's own pocketbook, for no one likes to pay taxes. Acts of omission, rather than commission, have been held by this Court to constitute misdemeanors under the Revenue Code, rather than felonies. *Spies* v. *United States*, 317 U.S. 492. But most people must realize that the maintenance and defense of the Nation depend upon the collection of taxes, and fraud, particularly where it is affirmatively manifested, is not sanctioned by any considerable portion of our citizenry. In the *Spies* case referred to above, this Court stated (at page 499):

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[26] The court referred to the dissenting opinion of Judge Learned Hand in *United States ex rel. Berlandi* v. *Reimer*, 113 F. 2d 429, 431 (C.A. 2), (which expressed the view that people view the evasion of taxes as a "venial peccadillo"); and to the dictum in *United States* v. *Carrollo*, 30 F. Supp. 3, 7 (W.D. Mo.), (the offense involved was an attempt to evade payment of a tax, a different crime from a fraudulent evasion). The court also cited with approval *United States ex rel. Manzella* v. *Zimmerman*, 71 F. Supp. 534 (E.D. Pa.) dealing with a prison break, although the holding in that case appears to have no direct relevance. (R. 53-54.)

> By way of illustration, and not by way of limitation, we would think affirmative willful attempt may be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, *concealment of assets or covering up sources of income,* handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the *likely effect of which would be to mislead or to conceal.* If the tax-evasion motive plays any part in such conduct the offense may be made out even though the conduct may also serve other purposes such as concealment of other crime.

The collection of taxes certainly is of the most vital importance to the existence of government. *Priestman* v. *United States,* 4 Dall. 28, 34. Fraudulent evasions of the taxpayer's obligations necessarily must be regarded with the utmost gravity. It would be a startling proposition, we believe, to proclaim as an accepted precept of our jurisprudence that a fraudulent evasion of taxes is not to be considered as morally reprehensible. In our view such misconduct indubitably would be viewed as morally obnoxious by the majority of our citizens. *In re Deisen,* 173 Minn. 297.

Moreover, the offenses committed by the respondents not only involve fraud, they were in themselves a business entirely based upon fraud. This is not the case of an individual who, because of economic circumstances committed isolated acts to avoid his

financial responsibilities to the Government; this is the case of a persistent law breaker who deliberately engaged in illicit enterprise essentially dependent upon defrauding the United States. It was respondent's business to cheat the Government. To urge that such crimes are not offensive to the prevailing moral senses of our people appears unsupportable. The public conscience does not view tolerantly such organized criminal enterprise.

The decision of the Court below conflicts with at least three decisions in other Circuits. Two of them are factually indistinguishable. *United States ex rel. Berlandi* v. *Reimer*, 113 F. 2d 429 (C.A. 2); *Maita* v. *Haff*, 116 F. 2d 337 (C.A. 9). See also *Rousseau* v. *Weedin*, 284 Fed. 565 (C.A. 9). In the *Berlandi* case the Court said (113 F. 2d at 430):

> We think it cannot be said that one who conducts a business with intent to defraud the government of taxes and who probably could not conduct it at a profit if he paid the taxes stands in a different position from that of a person who defrauds a private citizen of property. * * *
>
> * * * * * * *
>
> The strongest argument for the alien is perhaps his own that he was only a "moonshiner", but this to us is not persuasive. Fraud has ordinarily been the test whether crimes not of the gravest character involved moral turpitude in the sense of the statute. Here

> fraud was established by the judgment of conviction. The man was a persistent violator of the revenue laws, with the evident intention of plying a trade that would enable him to make money by defrauding the government of taxes. We cannot say that such a business was not disreputable and did not involve moral turpitude in a sense generally accepted, however lightly "moonshining" is sometimes regarded.

The third decision opposed to the holding below is *Guarneri* v. *Kessler*, 98 F. 2d 580 (C.A. 5), certiorari denied, 305 U.S. 648. There the court held that a conviction for smuggling alcohol into the United States with intent to defraud the United States involved moral turpitude and stated (p. 581) that:

> * * * the weight of authority sustains the conclusion that where the offense involves dishonesty or fraud it also involves moral turpitude. * * * All federal offenses are statutory but that does not fix their inherent nature. Smuggling is a crime at common law. *Keck* v. *United States*, 172 U.S. 434, 19 S. Ct. 254, 43 L. Ed. 505. Fraud is an ingredient of the offense and the statutes providing for its punishment are not merely prohibitory. We have no hesitancy in holding that to clandestinely introduce goods into the United States with intent to defraud the revenue is dishonest and fraudulent and involves moral turpitude.[27]

[27] See notes in 7 George Wash. L.R. 670 (1939); 37 Mich. L.R. 1294 (1939); 13 Tul. L.R. 622 (1939).

In attempting to distinguish *Guarneri* v. *Kessler*, *supra*, the Court of Appeals observed (R. 51):

> We think the common concept of those who engage in smuggling as a business is that they are dangerous criminals, criminals who would use any force or violence necessary to meet the dangers with which the business of smuggling is fraught.

The assumption that smugglers are dangerous criminals does not distinguish them from those who make it a business to violate the alcohol tax law.[28] The record reveals that during the prohibition era respondent was engaged in bootlegging. After repeal he continued his involvement in organized lawlessness for the purpose of defrauding the Government of taxes for his personal benefit.

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[28] In recent testimony before the Senate Special Committee to Investigate Organized Crime in Interstate Commerce, Dwight E. Avis, Assistant Deputy Commissioner of Internal Revenue, stated:

> Time has wrought significant changes in the law-enforcement problem. Prohibition developed the most lucrative crimnal enterprise the world has ever known. Murderers, thieves, confidence men, and petty criminals of all types entered the traffic, later to be characterized as "gangsters, racketeers, and mobsters." Large syndicates were formed, particularly in the metropolitan cities, to control the illicit traffic. Territory was allocated by the block. Gang slayings became an almost daily occurrence as these criminals fought for control of this lucrative traffic. The present-day racketeer is largely a product of that era. [Part 2, Hearings before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate, 81st Congress, 2d Sess., p. 85]

His convictions have established that he is a persistent, large-scale violator rather than a casual offender.[29] To argue that such crimes are not immoral is to disregard the tragic record of violence, bloodshed and corruption that has attended the activities of the bootlegger, the racketeer, and others who have unlawfully participated in the organized liquor business.[30] Respondent's crimes were aggravated and morally obnoxious, and appear by any test to involve moral turpitude within the meaning of the immigration laws.

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[29] In the second indictment alone, respondent was charged with possession of 4,675 gallons of alcohol and an undetermined quantity of distilled spirits (R. 33). At the rate of $2.25 a gallon then in effect, the tax on the alcohol alone would have been over $10,000.

[30] Exhibits introduced by James V. Bennett, Director of the Bureau of Prisons of the Department of Justice, before the Special Committee to Investigate Organized Crime indicate that there are presently in the federal prisons 2,035 liquor law violators and that 59.4% of them were repeaters. (Ex. 12 and 13, pp. 251-252, Part 2, Hearings before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate, 81st Congress, 2d Sess.)

Mr. Avis, Assistant Deputy Commissioner of Internal Revenue, testified at the same hearings (*id.* p. 86):

> Since repeal, the Unit, up to and including the month of May 1950, seized 162,292 illicit distilleries, 105,000,794 gallons of mash, 47,000 automobiles and trucks, and arrested 293,800 defendants.

CONCLUSION

The judgment below should be reversed.

PHILIP B. PERLMAN,
Solicitor General.

JAMES M. MCINERNEY,
Assistant Attorney General.

JOHN F. DAVIS,
Special Assistant to the Attorney General.

L. PAUL WININGS,
General Counsel, Immigration and Naturalization Service.

CHARLES GORDON,
Attorney.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 348

ANDREW JORDAN, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION,

Petitioner,

vs.

SAM DE GEORGE,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

THOMAS F. DOLAN,
Attorney for Respondent.

SHERLOCK J. HARTNETT,
Of Counsel.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

PETITIONER'S STATEMENT OF FACTS ARE FRAGMENTARY.

In the year 1921, when seventeen years of age, the Respondent, Sam De George, legally entered this country (R. 3, 4). He subsequently married an American citizen and reared a family while residing in Harvey, Illinois (R. 20, 21). He presently has a son attending an American university (R. 48). Proceedings for his deportation were commenced on the 10th day of October, 1941 (R. 10, 11), by reason of the fact that he had been twice convicted of violating S 3321 of Title 26, U. S. C., 26 U. S. C. A., S. 3321. Although the original warrant for his deportation was issued on October 10, 1941, and not on January 11, 1946, as stated by Petitioner, he was not seized for deportation by the Immigration Authorities until March, 1949, at which time a petition for writ of habeas corpus was filed in the

District Court of the Northern District of Illinois. The petition was dismissed and the prisoner remanded to the custody of the Immigration Authorities, which dismissal by the District Court was reversed by the Court of Appeals for the Seventh Circuit (R. 48-55).

PETITIONER DOES NOT SET FORTH ADEQUATE REASONS FOR GRANTING THE WRIT OF CERTIORARI.

1. The Decision of the Court Below is Not Erroneous.

The Court of Appeals of the Seventh Circuit had before it but one question which was: Is the statutory offense of conspiring to avoid the payment of excise tax on the manufacture and sale of alcoholic liquors, a crime involving moral turpitude as required under Section 19 (a) of the Immigration Act of February 5, 1917, 39 Stat. 889, as amended, 8 U. S. C. 155 (a).

In determining that question, the Court sought a definition as to what Congress intended by crimes "involving moral turpitude." The Court reviewed the hearings of the Committee of Immigration and Naturalization and reviewed the testimony given before the Committee (R. 49, 50). In the case of *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, in determining the meaning of the statutory words "sentenced more than once", this Court reviewed the legislative history of the Act concerned and quoted at length statements made by Congressman Sabath and Congressman Burnett.

The Court below, in attempting to determine the meaning of the words "involving moral turpitude," quoted Congressman Sabath in saying that he believed "in giving a man a chance who, due to conditions, commits some offense which really was not the crime of a hardened criminal" (R. 50). The Court further quoted Police Commissioner

Woods of New York City, indicated that he intended the Act to be aimed at those aliens who commit crimes of violence. The Court concluded that Congress intended such crimes to be those that would grieviously offend the moral code of mankind, even in the absence of a prohibitive statute.

The Petitioner relies upon a Fifth Circuit holding in *Guarneri* v. *Kessler*, 98 F. (2d) 580, certiorari denied, 305 U. S. 648, which was a case involving smuggling as a crime under the Immigration Act. It was there pointed out that smuggling was a crime at common law. In the *Guarneri* case, moral turpitude was defined as being "anything contrary to justice, honesty, principle or good morals" (98 F. 2d at 581), which definition would embrace every violation of the criminal statute and encompass offenses certainly not intended by the lawmakers.

The Petitioner relies upon *Berlandi* v. *Reimer*, 133 F. 2d 429, wherein it was decided that the evasion of taxes due the United States Government on alcoholic beverages, was a crime involving moral turpitude. The Court below considered the *Berlandi* case in its entirety and rejected the reasoning contained therein. In the *Berlandi* case, the Court decided that prior to the repeal of the prohibition laws, the violation of the Volstead Act would not be a crime involving moral turpitude. A distributor of alcoholic beverages prior to repeal could have been prosecuted under either the Volstead Act or under the Internal Revenue Laws. A violation of either would not at that time, have been a crime involving moral turpitude, but since the repeal of the 18th Amendment, the violator could be prosecuted only for violation of the Internal Revenue Act and the Court reasons that the crime now does involve moral turpitude. As the Court in the instant case has pointed out, the moral turpitude element of the crime would depend upon the purpose which the perpetrator had in mind at

the time the crime was committed and that such position is untenable in deportation proceeding as is involved here.

In the *Berlandi* case, the Court at the outset seemed determined to deport the alien, saying "The alien * * * was thereafter married in Pennsylvania to a native born citizen of the United States and has no children. His parents, brothers and sisters live in Italy and his wife contemplates a divorce." 133 F. 2d at 430.

2. The Decision Below Presents No Real or Embarrassing Conflict.

In *Layne and Bowler Corporation* v. *Western Well Works, Inc., et al.*, 261 U. S. 387, this Court said:

> "* * * it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." At Page 393.

It is submitted that the analysis and reasoning applied to the case involved by the lower court in the instant case disposes of the question and presents no problem for this court to review. The opinion of the Court below analyzes the conflicting opinion of *U. S. ex rel Berlandi* v. *Reimer, supra*, and properly refuses to follow that decision. The case of *Maita* v. *Haff*, 116 F. 2d, 337, is not in conflict with the decision below; a reading of that case reveals that it was admitted by the Appellant that the crime of evading the tax on liquor involved moral turpitude and there was no discussion of that point in the opinion. The problem presented to the Court in the *Maita* case was stated as follows:

> "Appellant contends that the Court erred in denying the application on the ground that a fair hearing was

not afforded him and that the evidence does not support the order of deportation." At page 337.

This Court can affirm the decision of the Seventh Circuit by dismissing the petition for the writ of certiorari.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

THOMAS F. DOLAN,
Attorney for Respondent.

SHERLOCK J. HARTNETT,
Of Counsel.

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THOMAS F. DOLAN,
Attorney for Respondent.

SHERLOCK J. HARTNETT,
Of Counsel.

THE BUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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OPINION BELOW.

The opinion of the Court of Appeals (R. 48-55) is reported at 183 F. 2d 768. The District Court wrote no opinion (R. 42).

JURISDICTION.

The judgment of the Court of Appeals was entered on July 10, 1950 (R. 55). The petition for a writ of certiorari was filed October 6, 1950, and was granted November 27, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED.

It is agreed that the only question presented to the court is whether or not a conspiracy to violate the Internal Revenue Code (Title 26, U. S. C. 3321) is a crime involving moral turpitude within the meaning of Section 19(a) of the Immigration Act of 1917.

STATEMENT.

The petitioner sets forth in a statement of facts that the respondent was convicted in the year 1924 for transporting liquors and was sentenced to a term in the reformatory and that he was convicted again in the year of 1941 and fined in the sum of $30.00 for transferring license plates. These convictions, the first when the respondent was 20 years of age, are not relevant to the issues involved and should not have been set forth in the petitioner's brief.

The respondent was born in Palermo, Italy, in the year 1904; he migrated to this country in the year of 1921 at which time he was 17 years of age; he married an American citizen, of which marriage one child was born who is now 19 years of age and a student at an American university; that marriage ended in divorce in the year of 1939; in 1944 the respondent married for the second time and again to an American citizen. He maintains his home at Harvey, Illinois, where he owns a half interest in property valued at approximately $20,000.00. He is employed as a chef in a restaurant of which he is half owner.

The respondent was indicted in May, 1937 under Title 18 U. S. C. 88, for conspiracy to violate the Internal Revenue Code and to this indictment he pleaded guilty and was sentenced to a term of one year and one day in the penitentiary which term was duly served.

Again in December, 1939, he was indicted for conspiracy, as before, to violate the Internal Revenue Code, and after a trial was sentenced to the penitentiary for a term of two years which term he duly served.

The respondent has not been arrested or charged with any crimes or infractions of the laws of the United States, the State of Illinois, or any of its political subdivisions since his discharge from the penitentiary as related above. The respondent is now 46 years of age and has lived in this country for twenty-nine years.

He was duly registered pursuant to the Selective Service Act as an alien on October 16, 1940, at local board #12, Lansing, Illinois. He has again registered pursuant to the requirements to the recent security act passed by Congress.

The original warrant for this deportation involved in this proceedings was issued out of the Office of Immigration and Naturalization Service on October 10, 1941 (R. 10-11). He was arrested on January 15, 1942 (R. 6) and a hearing was held on the 7th day of May, 1942, at the United States Penitentiary at Leavenworth, Kansas (R. 11-13). This hearing was continued until the 14th day of September, 1943, where it was resumed in Chicago, Illinois (R. 13-23).

On January 11, 1946, there was issued out of the Department of Justice a warrant of deportation (R. 41) directing that the respondent be deported to Italy on the charge that he was subject to deportation under the Immigration Act of February 5, 1917, Title 8, Section 155 A, 39 Stat. 889, in that the respondent had been sentenced more than once for a term of one year or more for the commission of a crime involving moral turpitude subsequent to his entry in the United States.

On the 8th day of March, 1949, a petition for Writ of Habeas Corpus was filed in the United States District Court for the northern District of Illinois, Eastern Division.

That on the 3rd day of October, 1949, the Honorable

William J. Campbell, one of the judges of the said court, after considering the evidence and law remanded the respondent to the custody of the petitioner, determining that the crimes for which the petitioner was indicted did involve moral turpitude.

The decision of the District Court for the Northern District of Illinois was duly appealed and judgment of the Court of Appeals in the 7th Circuit entered on July 10, 1950, reversed the order of the District Court and remanded the cause with directions to enter an order discharging the respondent (R. 55).

SUMMARY OF ARGUMENT.

The immigration statute does not provide that an alien convicted of two felonies or two serious crimes should be deported; the statute limits the deportation to aliens who have committed two crimes "involving moral turpitude."

To determine whether or not an act or a crime involves moral turpitude, a definition of that term must be formulated. The various courts have from time to time defined moral turpitude to consist of the ingredients of baseness—as something vile, repugnant and depraved.

Such definition was in the minds of the Committee of Immigration and Naturalization in 1916 when it was considering this act now before the Court.

The petitioner seeks to banish and exile the respondent from his adopted land; the action sought by the petitioner is penal in nature, and the statute must accordingly be construed in favor of the respondent.

ARGUMENT.

I.

Congress Did Not Intend That the Statute Under Which the Deportation Proceedings Are Being Executed Should Embrace the Crime of Conspiracy to Evade Excise Taxes.

In the hearings before the Committee of Immigration and Naturalization of the House of Representatives, Sixty-fourth Congress, First Session (H. R. 10384), held on March 11, 1916, before which Committee Mr. Arthur Woods, Police Commissioner of New York City, appeared, there is running through the testimony and statements by Mr. Woods and Congressman Sabath, an intent that the legislation under consideration should apply to those aliens who commit crimes of vileness; on pages 11 and 12 of the minutes of the hearing Mr. Woods related:

> "Mr. Woods: The second point I would like to make is one that is not covered in the present law. That is, that when the foreigner comes to this country legally, has not committed a crime abroad, but has a right to come in, and after he is here, prior to the time that he becomes a citizen he is convicted of a felony or serious crime—*you can phrase that as you think best*—I believe then that we should have the right to deport him. * * * *Now, I suggest a simple variation, that instead of saying that he must be convicted and sentenced for a year or more, I should say that he should be deported if he be convicted of a crime involving moral turpitude.* * * * We do not want aliens who commit serious crimes."

Petitioner argues that "the off-hand views expressed by ordinary witnesses at committee hearings" are not a reliable index to determine Congressional intent. Despite

what petitioner may contend, the Committee suggested and Congress adopted the proposals of Mr. Woods. As a matter of fact, the suggestions of Commissioner Woods were diluted in that the law as adopted provided after an alien was here five (5) years, he must be twice convicted. But the proposals of Mr. Woods that the crime be not catalogued as carrying a sentence of a year or more, but that it be defined as "involving moral turpitude" was adopted verbatim. He then gave the Committee two examples, one of which involved a murder and the other a stabbing. The Committee apparently did not consider him to be an "ordinary witness."

On page 14 of the Minutes, Mr. Woods said:

> "I would make provision to get rid of an alien in this country who comes here and commits felonies and burglaries, holds you up on the streets, and commits crimes against our daughters, because we do not want that kind of alien here, and they have no right to be here."

The Police Commissioner further stated on page 12:

> "* * * The rule is that if we get a man in this country who has not become a citizen, who knocks down people in the street, who murders or attempts to murder people, who burglarizes our houses with blackjacks and revolvers, who attacks our women in the city, those people should not be here, * * *"

On Page 16, Congressman Sabath stated:

> "Well, I am against the criminal and always have been, but I have always believed in giving a man a chance who, due to conditions, commits some offense which really was not the crime of a hardened criminal, or where it is not a crime against the State or the people."

The crimes which the Committee had in mind, as indicated by the statements above quoted appeared to be di-

rected at crimes of violence such as burglaries, murders and other offenses and assaults against the people and dignity of the community. The Committee talked of the hardened criminal and felt that if he had been convicted a second time for such an offense, that the violator could be classed as such a criminal and thereby subject to deportation.

The petitioner argues that from the language used by the Committee the statute was aimed at a person who committed a serious crime, a confirmed criminal, a repeater. The respondent agrees that the statute was aimed at a person who committed a serious crime, provided such crime "involved moral turpitude"; the respondent agrees that it was aimed at a confirmed criminal, provided such criminal was convicted of crimes "involving moral turpitude"; the respondent agrees that the statute was aimed at a person who is a repeater, provided that the repeater has been sentenced various times for crimes "involving moral turpitude."

By the use of the words "involving moral turpitude" Congress obviously intended to limit and restrict the crimes for which an alien could be deported; in other words, an alien was not to be deported for all felonies or crimes, but only for those acts which involved moral turpitude.

The Committee hearing ended with the Chairman stating to Police Commissioner Woods, "We are much obliged to you. Mr. Parker will prepare a couple of amendments along the lines that you have suggested."

On March 30, 1916, Mr. Burnett, Chairman of the Committee, introduced an amendment to the House of Representatives to deport the alien who had committed a crime prior to his admission into this country because under the existing law the time limit

"* * * would prevent a deportation of a man who

committed murder or any other crime involving moral turpitude on the other side." Congressional Record, Page 5164, 64th Congress, March 30, 1916.

This amendment was adopted by the House of Representatives without discussion or debate.

In *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, the Court had before it the problem of determining "the meaning of the statutory words 'sentenced more than once.'" To assist the Court in arriving at its decision a review of the debate on the floor of Congress was made to find the purpose of the amendment from its legislative history.

It has long been recognized that the Court should determine the intention of the legislature and enforce that intent. *Pennington* v. *Coxe*, 2 Cranch. 33.

II.

Moral Turpitude Refers to an Act of Baseness, Vileness and Depravity of Mind.

The term moral turpitude implies an act or offense that the community considers to be essentially immoral. The phrase has on numerous occasions been defined by the courts. The problem lies not in defining the term but rather in determining the offense or act that is morally wrong. The problem was recognized, as appears from the Minutes of the Hearing before the Committee on Immigration and Naturalization on page 8, when Mr. Woods recommended deportation for crimes involving moral turpitude Mr. Sabath replied:

"But you know that a crime involving moral turpitude has not been defined. No one can really say what is meant by saying a crime involving moral turpitude."

The Court of Appeals for the Seventh Circuit, in *Ng Sui Wing* v. *United States*, 46 F. (2d) 755, defined the term moral turpitude (P. 756) as:

> "An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man."

In *U. S. ex rel. Monzella* v. *Zimmerman*, 71 F. Supp. 534 (E. D. Pa.) (1947) the Court had before it an alien who while awaiting trial for bank robbery escaped from prison. The Immigration Authorities sought to deport him for committing two crimes involving moral turpitude. On appeal the Court held that the prison break did not involve moral turpitude saying (P. 537) that the term had never been clearly defined.

> "* * * because it refers not to legal standards, but rather to those charging moral standards of conduct."

Conspiracy to Defraud the United States of Excise Taxes on Distilled Liquors Is Not a Crime Involving Moral Turpitude.

Having defined the term it becomes necessary to evaluate the act or offense that stands accused of being morally wrong; of being morally repugnant to the conscience of the community.

In *Schmidt* v. *United States*, 177 F. (2d) 450 (C. C. A. 2d) (1949), the Court had to determine whether or not an applicant for citizenship established that he was a person of "good moral character" when he admitted that he had occasional sexual intercourse with single and unmarried women:

> "Even though we could take a poll, it would not be enough merely to count heads, without any appraisal

of the voters. A majority of the votes of those in prisons and brothels, for instance, ought scarcely to outweigh the votes of accredited churchgoers. Nor can we see any reason to suppose that the opinion of clergymen would be a more reliable estimate than our own. The situation is one in which to proceed by any available method would not be more likely to satisfy the impalpable standard, deliberately chosen, than we adopted in the foregoing cases: that is, to resort to our own conjecture, fallible as we recognize it to be."

The Attorney General on July 12, 1944, approved an opinion of the Solicitor of the Department of Labor quoted in Volume 2 of Administrative Decisions under Immigration and Naturalization Laws of the United States, P. 141 which was set forth by the Circuit Court (R. 50) stating in part that:

"A crime involving moral turpitude may be either a felony or a misdemeanor, existing at common law or created by statute, and is an act or omission which is *malum in se and not merely malum prohibitum*; • • • which is so far contrary to the moral law, as interpreted by the general moral sense of the community, that the offender is brought to public disgrace • • •"

During the period of our history that the 18th Amendment was in effect and enforced by the various prohibition laws, the act of making, possessing or selling alcoholic liquors was unlawful and the question arose during that time as to whether or not the violation of the prohibition laws involved moral turpitude.

In *United States ex rel. Iorio* v. *Day*, 34 F. 2d 920 (C. A. 2) the Court was called upon to determine this problem and said (p. 921):

"We do not regard every violation of the prohibition law as a crime involving moral turpitude. No doubt it is the solemnly declared policy of this country that liquor shall not be made, sold or possessed, but the

standard set up in Sections 3 and 19 of the act of 1917 (8 U. S. C. A., §§ 136, 155) was purposely narrower than that. All crimes violate some law; all deliberate crimes involve the intent to do so. *Congress could not have meant to make wilfullness of the act a test; it added as a condition that it must be shamefully immoral.* There are probably many persons in the United States who would so regard either the possession or sale of liquor; but the question is whether it is so by the common conscience, a nebulous matter at best. * * * We cannot say that among the commonly accepted mores the sale or possession of liquor as yet occupies so grave a place; nor can we close our eyes to the fact that a large number of persons, otherwise reputable, do not think it so, rightly or wrongly." *Coykendall* v. *Skrmetta*, 23 F. 2d 120 (C. A. 5); *Bortos* v. *U. S. District Court*, 19 F. 2d 722 (C. A. 8).

Since the repeal of the 18th Amendment and the prohibition laws, the act of making, possessing and selling of distilled liquors is controlled and regulated by the Federal Alcohol Administration Act, 49 Stat. 977, 27 U. S. C. A. 201-212. Petitioner admits that had the respondent been indicted under this law, the offense would not have involved moral turpitude as it is merely a regulatory statute. The respondent was actually guilty of four crimes, to-wit, violations of the Alcohol Administration Act and the conspiracies. Yet the offenses, as judged by the "common conscience" are the same—he was "bootlegging". The petitioner is arguing in effect, "We cannot deport this man because he was a 'bootlegger' (*United States ex rel. Iorio* v. *Day, supra*) so we will proceed on the theory of a conspiracy to defraud the United States of revenue."

In support of its position, petitioner relies upon several cases—*Guarneri* v. *Kessler*, 98 F. 2d 580 (C. A. 5) (1930); *Maita* v. *Haff*, 116 F. 2d 337 (C. A. 9) (1940), and the leading decision, *United States ex rel. Berlandi* v. *Reimer*, 113 F. 2d 429 (C. A. 2) (1940) which was carefully re-

viewed by the court below and found to be untenable. In the *Berlandi* case the Court reasoned that if the Volstead Act and the various prohibition laws were in effect, the violator could be prosecuted either for breaching those laws or under the internal revenue statutes. Such prosecutions on either theory "were but alternatives" (p. 430) and would be treated alike as far as the question of moral turpitude was concerned. This is the same court that decided *United States ex rel. Iorio v. Day, supra,* wherein it was held that violations of the Volstead Act did not involve moral turpitude. Thus, prior to repeal, a conviction of defrauding the United States of revenue on distilled liquors did not involve moral turpitude. The *Berlandi* court then reasons that since repeal that a violation of the internal revenue laws becomes one of specific intent to enhance profits—"rather than of satisfying the demand for liquor which the Prohibition Act refused to sanction" (p. 430). Somehow the court overlooked the issue of moral turpitude, and nowhere in the decision is the phrase defined. The Court for the 2nd Circuit further could not determine any difference between defrauding the government and defrauding an individual. Not to condone fraud, but to distinguish, the respondent argues that a tax due and owing to the government is a debt or an obligation created by the acts and conduct, lawful or unlawful, of the taxpayer; thus an industrious citizen by his diligence and hard work during a given tax period may receive a large income on which there is a certain tax due the government; this is a debt and obligation due the taxing bodies. If he attempts to evade that debt due the government, he is guilty of a crime; but he cannot be classified with one who by stealth and deceit defrauds his neighbor of money or chattels that the latter has accumulated through his efforts. In the *Berlandi* case Justice L. Hand in his dissent could not entertain the thought of the majority that there was no differ-

ence between fraud on the government and fraud on an individual, saying (p. 431):

> "* * * and surely it is quite beyond measure to compare its disrepute with defrauding an individual."

The dissent further stated (p. 431):

> "There is always the danger in construing this statute that we shall substitute logic for fact and deport a man for what people ought to consistently think of him, rather than for what they do; * * * But, as we said in *United States ex rel. Iorio* v. *Day*, 2 Cir., 34 F. 2d 920, we must try to appraise the moral repugnance of the ordinary man towards the conduct in question; not what an ideal citizen would feel."

Petitioner relies upon the case of *Guarneri* v. *Kessler, supra*, where the alien was convicted of smuggling in violation of the Tariff Act of 1930, 19 U. S. C. A. 1593 (a). The Court stated that moral turpitude had generally been defined by the courts as (p. 581):

> "Anything done contrary to justice, honestly, principle or good morals."

No cases are cited to support such a definition. To reinforce the finding that smuggling involved moral turpitude it is stated that smuggling was a crime at common law. Respondent will admit that it was a crime *before* the common law; when "man" wore loin cloths in primitive tribes, perhaps the most serious offense was the introduction into that suspicious group of something foreign; the new and the strange was hated and feared.

Marita v. *Haff*, 116 F. 2d 337 (C. A. 9) (1940) cited by petitioner, without discussion or citation of authority, announces (p. 337):

> "This crime (conspiracy to defraud the government) involves moral turpitude."

Petitioner does not contend in this proceeding that the respondent committed a crime or violated any statute by making liquor—the act itself was not wrong. In *United States ex rel. Andreacchi* v. *Curran*, 38 F. 2d 498 (S. D. N. Y.) (1926) the alien was convicted of violating the Harrison Anti-Narcotics Act. In finding that such violation did not involve moral turpitude, the Court said (p. 499):

> "The crime consists not in engaging in narcotic traffic, but in merely failing to register, pay a tax and comply with certain regulations of the Internal Revenue Commissioner. It is to be regarded solely as a revenue act * * *
>
> "The fact that the thing may be done, providing a tax is paid to the government, indicates that the act itself does not involve moral turpitude."

To the same effect in *United States* v. *Carrollo*, 30 F. Supp. 3 (W. D. Mo.) (1939) wherein the Court said (p. 6):

> "The 'moral turpitude' that may be involved in a crime does not exist merely because there has been a crime, a violation of law. In a sense, it is immoral to violate any law, even a traffic ordinance, but here the words 'involving moral turpitude' clearly suggest something more serious, for otherwise they are pure surplusage. *The 'moral turpitude' must exist entirely apart from the fact that some statute has been violated.* If a crime is one involving moral turpitude it is because the act denounced by the statute grievously offends the moral code of mankind and would do so even in the absence of a prohibitive statute. The moral code of mankind was not enacted and it cannot be amended by legislature."

Respondent was convicted of violating the Internal Revenue laws; yet one resident of the community, a real estate dealer, stated that respondent was a good citizen except when "he became mixed with bad company and violated the liquor law" (R. 40). This real estate man, who would likely be more familiar with the distinction between

the liquor law and the excise tax levied on liquor, believed that respondent had violated the liquor laws; it would follow that most of the people of the community, except perhaps lawyers, thought he had been indicted for liquor law violations. As appears from his testimony before the Immigration Inspector the respondent thought he had been indicted and convicted for "conspiracy to violate the liquor laws" (R. 18).

Petitioner sets forth in detail the dependence of the government on the collection of taxes. It must be stressed that this is not a proceeding to collect taxes due the government; there is ample machinery for that purpose as respondent well knows; he has been punished for violating the Internal Revenue Code and served the confinement period.

In this proceeding the Immigration Authorities are seeking to banish and exile the respondent from this country in which he has resided for a period of some thirty years, where his family resides and which is his home. Justice Douglas, in *Fong Haw Tan* v. *Phelan, supra,* at page 367, said:

> "* * * deportation is a drastic measure and at times the equivalent of banishment or exile, *Delgadillo* v. *Carmichael,* 332 U. S. 388, 68 S. Ct. 10. It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."

From the cases on the subject defining moral turpitude, it has frequently been stated that the act must be base, vile or depraved. The respondent here sold liquor, which act is not unlawful; it is the failure to pay the tax. It

will be noted that such failure is not the violation of a prohibiting statute. The statute states that if one sells liquor there must be paid to the Government an excise tax. Rather than being a prohibitive statute, it is one that compels the doer to do an affirmative act. It is stated in the cases cited herein that the criterion for determining whether or not the element of moral turpitude is involved is to view the act as though there were no violations of any law or statute. Applying that test to the criminal acts herein alleged, it could not be argued with any seriousness that the failure to pay the tax was an act which involved moral turpitude.

Conclusion.

The judgment below should be affirmed.

Respectfully submitted,

THOMAS F. DOLAN,
Attorney for Respondent.

SHERLOCK J. HARTNETT,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 348

ANDREW JORDAN, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION,

Petitioner,

vs.

SAM DE GEORGE,

Respondent.

PETITION FOR REHEARING.

THOMAS E. DOLAN,
Attorney for Respondent.

SHERLOCK J. HARTNETT,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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PETITION FOR REHEARING.

POINTS RELIED ON.

I. The Court erred in broadening the word "fraud" to include those instances where a taxpayer fails to pay a tax to the taxing bodies.

II. The Court erred in failing to inquire into the legislative history to determine and construe a vague and ambiguous statute.

(a) The Court erred in construing a doubtful statute against the respondent.

III. Mr. Associate Justice Tom C. Clark should have disqualified himself from a consideration of this cause.

ARGUMENT.

I.

The Court Erred in Broadening the Term "Fraud" to Include Those Instances Where a Taxpayer Fails to Pay a Tax to the Taxing Bodies.

The respondent respectfully urges the Court to reconsider its ruling that any crime which contains an ingredient of fraud involves moral turpitude. The Court properly limited the problem to whether this particular offense involved moral turpitude. "Whether or not certain other offenses involve moral turpitude is irrelevant and beside the point." The Court then proceeds to enumerate *other offenses* which have been adjudged as involving moral turpitude: Obtaining goods under fraudulent pretenses; conspiracy to defraud by deceit and falsehood; forgery with intent to defraud; using mails to defraud; execution of chattel mortgage with intent to defraud; concealing assets in bankruptcy; issuing checks with intent to defraud.

In each instance recited by the Court it will be observed that the crime consisted of fraud upon another individual—the taking away from another of his goods and property. This respondent contends there is a vast difference between the "criminal" who fails to pay a just and existing obligation or debt, to wit, a tax, and the criminal who passes worthless checks to obtain the wares of the seller.

> "* * * and surely it is quite beyond measure to compare its disrepute with defrauding an individual." *U. S. ex rel. Berlandi* v. *Reimer*, 113 F. 2d 429, 431 (L. Hand dissenting).

The majority states that *without exception* American Courts have found that fraud commits any crime to the

category "involving moral turpitude." The lower Court discussed *United States* v. *Carrollo*, D. C. W. D. Mo., 30 F. Supp. 3, 7, wherein the District Court said:

> "* * * We are not prepared to rule that an attempt to evade the payment of a tax due the nation, or the commonwealth, or the city, or the school district, wrong as it is, unlawful as it is, immoral as it is, is an act evidencing baseness, vileness or depravity of moral character. The number of men who have at some time sought to evade the payment of a tax or some part of a tax to some taxing authority is legion. Any man who does that should be punished civilly or by criminal sentence, but to say that he is base or vile or depraved is a misuse of words."

In the *Carrollo* case the alien had entered a plea of guilty to violation of 26 U. S. C. 145 (b), which provides for a $10,000.00 fine or imprisonment of not more than five years, or both, upon conviction of any person who fails to collect, account for or pay over any tax which such person is required by the section to so collect and pay over to the Government.

The *Carrollo* proceeding was under a section of the Internal Revenue Code which does not use the term "fraud" but rather employs the words "defeat or evade." The ruling of this Court rests upon the premise that Sam De George perpetrated a fraud upon the Government. Technically he was indicted under a fraud statute (18 U. S. C. 371), but in fact he was attempting to defeat or evade a tax due the United States.

II.

The Court Erred in Failing to Inquire Into the Legislative History to Determine and Construe a Vague and Ambiguous Statute.

(a) The Court erred in contruing a doubtful statute against the respondent.

In this cause the Court was asked to construe the admittedly vague terminology "moral turpitude" as witness the discussion of the majority and vigorous dissent. In the case of *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, the Court was called upon to construe the seemingly well-defined term "sentenced more than once" and Mr. Justice Douglas, speaking for the unanimous Court, reiterated that fundamental policy of statutory construction (p. 10):

> "* * * But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."

The Court in *Fong Haw Tan* saw need to give a detailed review of the Congressional Record and Committee Report (p. 9) to determine the Congressional meaning of the words "sentenced more than once" but did not deem such appraisal necessary to determine the phraseology "crimes involving moral turpitude." The respondent urges a re-reading of the legislative history as set forth in Section I of Respondent's Brief.

It is the duty of the Courts to determine the legislative intent and to enforce the law according to that intent, if that intent is reasonably deducible from the legislation enacted. The Courts should never in considering a statute put a strained construction thereon, or one that

produces unreasonable results. Chief Justice Marshall said in *Pennington* v. *Coxe*, 2 Cranch 33, 59:

> "* * * It is the duty of the Court to discover the intention of the legislature and to respect that intention."

The appeal in this matter was admittedly taken to give the Immigration Department instructions and a definition of the term involved. The decision merely decides that Sam De George must go back to Italy. Rather than define or construe the terms, the Court has found that it embraces any crime in which fraud is an ingredient and thereby opening the door to a flood of warrants to deport aliens not intended by Congress when it enacted 19 (a) of the Immigration Act of 1917 (8 U. S. C. 155(a)).

The problem is still left to the moral reactions of the particular judge called upon to determine the question as stated in *Schmidt* v. *United States*, 177 F. 2d 450, 451:

> "* * * The situation is one in which to proceed by any available method would not be more likely to satisfy the impalpable standard, deliberately chosen than that we adopted in the foregoing cases; that is, to resort to our own conjecture, fallible as we recognize it to be."

III.

Mr. Associate Justice Tom C. Clark Should Have Disqualified Himself from a Consideration of This Cause.

The initial warrant for arrest of alien was taken out by the Department of Justice on the 10th day of October, 1941 (R. 10-11), and the matter has been prosecuted by the Department since that date. The respondent filed his petition for a writ of habeas corpus on March 8, 1949 (R. 2-4), and a return to said writ was made on March 16, 1949, by Otto Kerner, Jr., United States District Attorney

for the Northern District of Illinois (R. 5-10). The District Court for the Northern District of Illinois, Eastern Division, on October 3, 1949, dismissed the writ of habeas corpus and remanded the petitioner to the custody of the immigration officials, which dismissal was reversed by the Circuit Court of Appeals for the Seventh Circuit. The office of the Attorney General has vigorously prosecuted this matter since its inception.

It is respectfully suggested that Mr. Associate Justice Tom C. Clark should have disqualified himself from a consideration of this cause.

Conclusion.

It is respectfully prayed that this petition for rehearing be granted with or without oral argument, as the Court shall so order, and that upon such rehearing the order entered herein on the 7th day of May, 1951, be reversed.

Respectfully submitted,

THOMAS F. DOLAN,
Attorney for Respondent.

SHERLOCK J. HARTNETT,
Of Counsel.

CERTIFICATE.

Counsel for Respondent certifies that this petition for rehearing is presented in good faith and not for delay, and that the petition is restricted to the grounds above specified.

THOMAS F. DOLAN,
Attorney for Respondent.